



**STAFF REPORT  
ACTION REQUIRED**

**Private Donation to Animate the F.G. Gardiner Expressway  
from Approximately Strachan Avenue to Spadina Avenue**

<b>Date:</b>	November 19, 2015
<b>To:</b>	Executive Committee
<b>From:</b>	Deputy City Manager, Cluster A Deputy City Manager, Cluster B
<b>Wards:</b>	Ward 19 – Trinity-Spadina Ward 20 – Trinity-Spadina
<b>Reference Number:</b>	P:\2015\ClusterB\ WF\EX15009

**SUMMARY**

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This report seeks City Council authority to accept a donation of up to \$25 million from the Judy and Wilmot Matthews Foundation (the "Donor") for the "Project: Under Gardiner," consisting of public realm improvements beneath the elevated F.G. Gardiner Expressway from approximately Strachan Avenue to Spadina Avenue. The donation would represent one of the most significant donations ever made to the City of Toronto. The Matthews family hopes their actions will inspire others to provide significant gifts to the City of Toronto.

The intent of Project: Under Gardiner is to transform 10 acres of vacant space beneath 55 bents of a western segment of the elevated Gardiner into unique open spaces, or "rooms," featuring public art, landscape improvements, destination space for festivals and markets, as well as a pedestrian and cycling trail. A robust public consultation program would be undertaken in association with the planning and design process.

The project would complement capital improvements planned for the Fort York National Historic Site. It would advance the *Central Waterfront Secondary Plan* goals of: Removing Barriers/Making Connections; Building a Network of Spectacular Waterfront Parks and Public Spaces; and Promoting a Clean and Green Environment. It would also promote other civic initiatives related to active transportation, and complement the conversion of some privately owned lands beneath the Gardiner to publicly accessible space by local developers.

The first phase of the project is proposed for Strachan Avenue to Grand Magazine Street west of Bathurst Street. Completion would be targeted for July 2017 in time for Canada's Sesquicentennial celebrations. Project implementation would be coordinated with the ongoing rehabilitation of the Gardiner Expressway. The scope and schedule for the subsequent phase(s) of the project between Bathurst Street and Spadina Avenue would also be developed.

City of Toronto divisions, working with Waterfront Toronto (WT), would collaborate with the Donor to realize the project in accordance with a Memorandum of Understanding (MOU), to be developed among the parties. The Term Sheet, attached to this report, would form the basis of the MOU, as well as a Delivery Agreement between the City and WT. A Steering Committee with representation from the City, WT and the Donor would be established to oversee the project and its funding, which would flow to WT in regular increments through a sole-purpose reserve fund at the City of Toronto. Ken Greenberg Consultants Incorporated and the landscape design firm Public Work would work with the Donor, WT and the City on project planning and design.

Should the donation be accepted, Waterfront Toronto and the City would study governance and funding options for ongoing post-completion programming, operations and maintenance. Consideration would be given to the role of City divisions, and to the creation of a wholly owned City Services Corporation, an independent non-profit corporation, a charitable foundation or other appropriate vehicle to program, operate and maintain the facility, securing private donations and sponsorships, including participation from local area developers and leaseholders. The Waterfront Secretariat and Toronto Office of Partnerships would report to Executive Committee in the first quarter of 2016 on potential governance and funding options for this important legacy project.

## **RECOMMENDATIONS**

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The Deputy City Manager, Cluster A and the Deputy City Manager, Cluster B recommend that:

1. City Council authorize the City to accept a donation of up to \$25 million from the Judy and Wilmot Matthews Foundation (the "Donor") for the purpose of improving the public realm beneath the elevated Gardiner Expressway between approximately Strachan Avenue and Spadina Avenue;
2. City Council authorize the Deputy City Manager, Cluster A, and Deputy City Manager, Cluster B, to negotiate and enter into a Memorandum of Understanding with the City of Toronto, Waterfront Toronto and the Donor, substantially based on the terms and conditions described in this report, set out in the Term Sheet attached as Appendix 1 to the report dated November 19, 2015 from the Deputy City Manager, Cluster A, and the Deputy City Manager, Cluster B, and such further terms and conditions as may be acceptable to the Deputy City Managers, Clusters A and B and the City Solicitor, as well as any related agreements, notices or undertakings;
3. City Council authorize the Deputy City Manager, Cluster A, and the Deputy City Manager, Cluster B, to negotiate and enter into a Delivery Agreement with Waterfront

Toronto, substantially based on the terms and conditions described in this report, set out in the Term Sheet attached as Appendix 1 to the report dated November 19, 2015 from the Deputy City Manager, Cluster A, and the Deputy City Manager, Cluster B, and such further terms and conditions as may be acceptable to the Deputy City Managers, Clusters A and B and the City Solicitor, as well as any related agreements, notices or undertakings; and

4. City Council direct the Deputy City Manager, Cluster A, and the Deputy City Manager, Cluster B, to report back to Executive Committee in the first quarter of 2016 on governance and funding options for programming, operations and maintenance of the "Project"; as required by the Term Sheet attached as Appendix 1 to the report dated November 19, 2015 from the Deputy City Manager, Cluster A, and the Deputy City Manager, Cluster B.

## **FINANCIAL IMPACT**

The 2016 Recommended Capital Budget for the Waterfront Revitalization Initiative will include Project: Under Gardiner for Council's consideration, with project funding reflecting the donation from the Judy and Wilmot Matthews Foundation.

Upon completion and assumption of the project by the City, there would be programming, operations and maintenance costs associated with the new amenities of Project: Under Gardiner. Waterfront Toronto and the City would identify a preferred governance and funding model for the project for Council consideration. City staff would report on governance and funding options to Executive Committee in the first quarter of 2016.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **COMMENTS**

### **1. Description of Project: Under Gardiner**

Project: Under Gardiner, proposed by the Judy and Wilmot Matthews Foundation, would transform an area of 10 acres beneath the elevated Gardiner Expressway, from approximately Strachan Avenue to Spadina Avenue, into a new east-west network of public realm amenities. The project would provide a continuous multi-use trail, programming spaces and other public realm improvements that would knit together a number of communities. These would include the neighbourhoods of Fort York/Garrison Point, Exhibition Place, Liberty Village, South Niagara, Bathurst Quay, Wellington Place and City Place.

Project: Under Gardiner would be designed to the donation limit of \$25 million but could be supplemented by additional future private donations and sponsorships. The project would leverage City investments in the Gardiner Expressway, Fort York and nearby parks. The

proposal has been developed by Toronto planner and urban designer Ken Greenberg, and the local landscape design firm Public Work. A first phase of work is envisioned from approximately Strachan Avenue to Bathurst Street on mostly municipal lands. Slated to open in time for Canada's Sesquicentennial Celebrations in July 2017, the proposal includes a continuous 1.75-kilometre pedestrian and cycling trail, art displays, and a series of destination market, event and programming "rooms" beneath the Gardiner. The scope and schedule for the subsequent phase(s) of the project between Bathurst Street and Spadina Avenue would be developed in the coming months.

Through social media, a project website, a drop-in pavilion and public meetings, WT would invite public participation in the design process and development of programming. A "Reclaim the Name" campaign would also be launched in December 2015 to seek the public's help in permanently naming the project now referred to as Project: Under Gardiner.

**Figure 1: Map of "Project: Under Gardiner" Boundaries**



## 2. Scale of Proposed Gift and Potential Precedent

The donation from the Judy and Wilmot Matthews Foundation represents an extraordinary gift to the residents of Toronto. For the first time, the City of Toronto would receive a gift on the scale customarily directed to universities, hospitals and large cultural institutions. The magnitude of the gift has the potential to deliver important city-building initiatives and create a profound legacy for all Torontonians.

Each year, the City receives significant funding from a variety of partners, (including businesses, not-for profit groups and others), in the form of sponsorships, grants, joint ventures and donations. In 2014, the City collaborated with over 100 such partners and issued more than 7,000 tax receipts to individuals. These partnerships contributed over \$24 million to a number of City initiatives and services, and included \$1.1 million in tax-receipted donations. While this is a sizeable sum for a municipality, it is eclipsed by this single donation from the Matthews Foundation, which would represent one of the most significant gifts in Toronto's history. It is

hoped that such a gift will inspire other Torontonians to make similar philanthropic contributions to city-building initiatives.

### **3. Enhancement of City of Toronto Initiatives**

Project: Under Gardiner would be aligned with a number of City of Toronto transportation, planning, economic, cultural, heritage and recreational initiatives, as noted below.

#### **F.G. Gardiner Expressway**

The Gardiner Expressway is a six-lane controlled access highway that extends 18 kilometres between Highway 427 in the west to just east of the Don River. Seven kilometres of the expressway east of Dufferin Street are elevated. In the 1.75-kilometre Under Gardiner Project area between Strachan Avenue and Spadina Avenue, the Gardiner Expressway runs along the former Grand Trunk rail line along the original Lake Ontario shoreline. Here, Lake Shore Boulevard runs south of the Gardiner Expressway rather than beneath it. Consequently, Gardiner elevations range from 12.5 metres to 11.6 metres above ground-level, providing cathedral-like vacant spaces for the Under Gardiner legacy project.

More and more, infrastructure such as the Gardiner is being used to engage and transform communities. North American cities like New York, Milwaukee and Atlanta are undertaking exercises to animate their elevated expressways and structures, to integrate public art, landscape, lighting, pedestrian and cycling amenities, and to create development opportunities. As far back as Metropolitan Toronto's Gardiner-Lake Shore Task Force, the City has had a longstanding ambition to improve underutilized and inhospitable areas along the Gardiner-Lake Shore corridor through the provision of welcoming and accessible routes to the waterfront. In the broader Gardiner corridor, the City has undertaken a number of projects, such as the Fort York Visitors Centre and Underpass Park, as well as recreational trails and streetscape and intersection improvements, including those at the intersection of Lake Shore Boulevard with Sherbourne Street and Parliament Street.

Project: Under Gardiner would be coordinated with the City's Strategic Rehabilitation Plan for the Gardiner Expressway, which is maintaining the expressway in a safe and operable condition. The City is currently rehabilitating the deck for the western portion of the elevated section of the Gardiner from approximately Manitoba Drive west of Strachan Avenue to Grand Magazine Street, west of Bathurst Street, with completion expected in October of 2016. Before the Under Gardiner project gets underway in 2016, staff will develop a coordination plan to ensure that ongoing Gardiner rehabilitation work is not impacted, and that required access is maintained for the current and future rehabilitation and maintenance work to be undertaken by Transportation Services or Engineering and Construction Services.

#### **Central Waterfront Secondary Plan**

Project: Under Gardiner is within the boundaries of the designated waterfront area (DWA) that is the subject of the tri-government waterfront revitalization initiative, led by Waterfront Toronto. The Project would be consistent with the core principles of the *Central Waterfront Secondary*

*Plan* that guide renewal efforts in the DWA, including: Removing Barriers/Making Connections; Building a Network of Spectacular Waterfront Parks and Public Spaces; and Promoting a Clean and Green Environment.

Approximately 70,000 residents in seven adjoining communities would be connected by Project: Under Gardiner. The improvements would link developments at Bathurst Quay, Mouth of the Creek Park, the Well, Garrison Point, the Block 31 community centre and schools project at City Place, and the Ontario Place revitalization. The project would complement the existing conversion of space beneath sections of the Gardiner to publicly accessible open space by area developers, at the Onni project on Bathurst Street, and the Mitosis Courtyard at City Place, for example. It would link a number of other planned or existing projects and sites in the area such as the Portland Street Pedestrian Bridge (Puente de Luz), the Fort York Pedestrian and Cycle Bridge, the extension of the West Toronto Railpath, the Fort York Library, June Callwood Park and Coronation Park, as well as smaller trails and green spaces. Like all Toronto waterfront amenities, the area would become a destination for all Torontonians as well as visitors.

**Figure 2 – "Project: Under Gardiner" Rendering Looking East from Strachan Ave.**



**Fort York**

Project: Under Gardiner would be consistent with capital improvement plans for the Fort York National Historic Site, such as the overall Landscape Master Plan for Fort York, and the Fort York and Garrison Common Parks and Open Space Plan approved by City Council. Specifically, it would complement planned improvements to the road that leads from Garrison Road to the historic fort through the Garrison Common in the spring of 2016, as well as \$1 million of landscape improvements planned for 2018. The approach would allow for completion of

amenities in a coordinated manner, while providing new and expanded opportunities for programs and events at Fort York and in the surrounding areas.

## Culture

Project: Under Gardiner would be consistent with the Waterfront Culture and Heritage Infrastructure Plan *Canada's Urban Waterfront*, 2001. It would create a new east-west corridor across 1.75 kilometres, connecting cultural destinations across the waterfront, including Ontario Place, Toronto Music Garden, Harbourfront Centre, the CN Tower, Rogers Centre, Toronto Railway Museum, Ripley's Aquarium, the Air Canada Centre and the Toronto Islands via the Jack Layton Ferry Terminal.

## Parks Forestry and Recreation

Over the past 10 years, 23 hectares of parkland have been built in the Downtown and five additional hectares have been secured. This addition of new parkland, however, is not keeping pace with the increase in Downtown population which has grown by 45% over the same period. There remains an urgent need to increase parkland and look for innovative solutions, both in the Downtown and along the waterfront, to meet the need for neighbourhood and regional parks. Consequently, Project: Under Gardiner would provide opportunities for improving area parks and trails to support the diverse city needs for active, healthy lifestyles and engaged communities. Specific neighbourhood requirements include children's playgrounds, dog off-leash areas and active recreation for local use. The project would also provide opportunities for community involvement in the planning and design of the space, as well as for future involvement with community partners and volunteers.

## 4. Legal Agreements Among the Parties

The Term Sheet appended to this report describes the roles, responsibilities and expectations of the City of Toronto, Waterfront Toronto and the Judy and Wilmot Matthews Foundation with respect to Project: Under Gardiner. The Term Sheet would form the basis of a Project Delivery Agreement between the City and WT, as well as a Memorandum of Understanding (MOU) among the City, WT and the Foundation. The documents would be negotiated in consultation with the City Solicitor, following Council consideration of this report.

The roles of the three parties as identified in the Term Sheet are outlined below.

### Role of Judy and Wilmot Matthews Foundation

The Judy and Wilmot Matthews Foundation, on behalf of Judy and Wilmot Matthews, would donate up to \$25 million to the City of Toronto for eligible capital costs, to be itemized in the MOU. An initial cash installment of \$3 million would be advanced to the City for design development work, in accordance with Section 11 of the Term Sheet appended to this report, which requires an approved governance and funding model be established by July 1, 2016. A series of installments would be provided over a period of time as required following this initial installment. The Foundation would enter into a Memorandum of Understanding with the City

and Waterfront Toronto that would further detail the roles and responsibilities associated with the donation and the project. A Steering Committee consisting of one representative from each of the three parties, would serve as the primary oversight body for all funding requests to the Donor.

## Role of City of Toronto

As recommended in a companion report for Council approval from the Deputy City Manager and Chief Financial Officer, the City would create a reserve fund to receive any and all monies that the Matthews Foundation donates for this project, as well as any interest that the City earns on such donated monies. As part of administrative amendments to reserve fund accounts 2015, a separate report to this meeting of the Executive Committee from the Deputy City Manager and Chief Financial Officer seeks to establish the obligatory reserve fund account for Project: Under Gardiner. Part of the Waterfront Revitalization Initiative Capital Budget, the "Gardiner West Public Realm Improvements Reserve Fund" would serve as the vehicle by which a series of grants would be transferred to Waterfront Toronto from the donated funds, in accordance with the project MOU and Delivery Agreement. Interest accruing to this reserve account would be directed to the project. The City would provide the Foundation with acknowledgement receipts for the amount of the gifts.

Authorized City officials, in consultation with the City Solicitor, would negotiate and enter into two agreements associated with the project, namely: the Memorandum of Understanding among the City, WT and the Matthews Foundation; and the Delivery Agreement between the City and WT. The City would also provide the necessary access and/or rights to its lands within the project area and participate in the development of the project in cooperation with Waterfront Toronto.

The majority of amenities created through the project would be assumed by the City of Toronto, which would retain liability for them. The City and WT would work together to identify a preferred governance and funding model for the ongoing programming, operations and maintenance of the area, as described in Section 5 below. Private owners, developers and condominium corporations would retain maintenance, liability and other jurisdiction over their own lands beneath the Gardiner.

## Role of Waterfront Toronto

Waterfront Toronto would manage the capital improvements on behalf of the City of Toronto, retaining all designers, engineers and contractors, as required. WT would lead efforts to identify a preferred governance and funding model for the ongoing programming, operations and maintenance of the project. It would encourage private owners or leaseholders to participate in the project by entering into access and other agreements, and by contributing to funding, programming and other initiatives. WT, through its contractors, would be responsible for six months of operations and maintenance of all new public amenities created through this project, prior to assumption of the facilities by the City.



WT would negotiate and enter into two agreements associated with the project, namely: the Memorandum of Understanding among the City, WT and the Foundation, and the Delivery Agreement between the City and WT. Waterfront Toronto would also furnish the City with monthly activity reports as well as issuing invoices prior to receiving funding installments. WT would maintain the donated funds in a separate account distinct from the Toronto Waterfront Revitalization Long Term Funding Plan. This account, including any interest earned, would be used exclusively for eligible costs for the project, as defined in the MOU.

WT would lead public engagement in the project, inviting Toronto residents to participate in the design process and development of programming. Torontonians would be able to share their ideas and thoughts through social media, a project website, a drop-in pavilion and public meetings. A "Reclaim the Name" campaign would also be launched in December 2015 to seek the public's help in naming the project.

## **5. Programming, Operations and Maintenance**

Under the City's Donation Policy, donations are to be accepted only if the receiving Division has the capacity to meet the initial and ongoing costs and obligations associated with the gift: [http://www1.toronto.ca/city\\_of\\_toronto/toronto\\_office\\_of\\_partnerships/files/pdf/donation\\_policy.pdf](http://www1.toronto.ca/city_of_toronto/toronto_office_of_partnerships/files/pdf/donation_policy.pdf).

This project is both exciting and challenging in that many City divisions would be involved, as well as both public and private entities with interests in the affected area. It is recognized by the City, Waterfront Toronto and the Donor that the overall vision for the project can be achieved only if, prior to construction, a Council-approved governance and funding model is established to achieve high-quality programming, operations and maintenance. As stated in the attached Term Sheet, the parties agree that in order to accomplish this goal, further study and work is required to determine a viable governance and funding model.

The study of governance and funding options for this initiative would review local and international best practices, identify a framework for fundraising and sponsorships. Consideration would be given to the role of City divisions, to the creation of a wholly owned City Services Corporation, an independent non-profit corporation, a charitable foundation or other appropriate vehicle to program, operate and maintain the facility, and to secure private donations and sponsorships. The applicability of a Business Improvement Area (BIA) model would also be examined.

Waterfront Toronto has agreed to lead this investigative process, working with City divisions such as the Waterfront Secretariat; Toronto Office of Partnerships; Parks, Forestry and Recreation; Economic Development and Culture (especially Fort York); Transportation Services; Engineering and Construction Services and others. City staff would report to Council with recommendations on these matters in the first quarter of 2016. If a satisfactory approach to programming, operations and maintenance has not been established by July 1, 2016, the Donor would make no further contributions to the project beyond the first installment of \$3 million.

## **6. Timeline**

Project: Under Gardiner would be undertaken in multiple phases in coordination with the City's ongoing Strategic Rehabilitation Plan for the Gardiner Expressway. The first phase of construction between approximately Strachan Avenue and Bathurst Street would be targeted for completion by July 2017, in time for Canada's Sesquicentennial celebrations. The scope and schedule for the subsequent phase(s) of design and construction between Bathurst Street and Spadina Avenue would be developed, in accordance with the Gardiner rehabilitation program.

## **7. Next Steps**

Following Council endorsement of this report, a number of key steps would be taken to begin the project, as highlighted below:

- Approval by Waterfront Toronto Board of Directors;
- Execution of Memorandum of Understanding and Delivery Agreement;
- Establishment of sole-purpose reserve accounts at the City and WT;
- "Reclaim the Name" campaign and other ongoing public engagement;
- Retention of a programming advisor;
- Retention of firm to undertake a governance and funding model for ongoing project programming, operations and maintenance;
- Report back to Executive Committee in Q1 2016 on governance and funding options for programming, operations and maintenance;
- Development of schematic design;
- Agreements/easements with public and private owners;
- Securing of environmental approvals from the Ministry of Environment and Climate Change; and
- Start of construction in August 2016, subject to coordination with work related to the City's Strategic Rehabilitation Plan for the Gardiner Expressway.

## **8. Conclusion**

The donation from the Judy and Wilmot Matthews Foundation represents an unprecedented opportunity to transform lands under a western segment of the Gardiner Expressway into 1.75 kilometres of vibrant new public realm. The proposed continuous multi-use trail, programming spaces and other public realm amenities would integrate the expressway infrastructure into the heart of a number of communities, successfully linking a number of waterfront destinations and spaces.

Legal agreements among the City, Waterfront Toronto and the Matthews Foundation would provide an accountability framework to guide the project from inception to completion. A governance and funding model for programming, operating and maintaining the new amenities in perpetuity would be the subject of a further report to Executive Committee in early 2016.

The Waterfront Secretariat and Toronto Office of Partnerships have prepared this report in consultation with a number of City divisions, including Economic Development and Culture; Parks, Forestry and Recreation; Transportation Services; Engineering and Construction Services; Legal Services; City Planning; Corporate Finance; and Real Estate Services.

## **CONTACTS**

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## **SIGNATURE**

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## **Appendices**

Appendix 1 – Term Sheet Among the City of Toronto, Waterfront Toronto and Judy and Wilmot Matthews Foundation

## TERM SHEET

### THE PARTIES:

- Judy and Wilmot Matthews Foundation (the “**Foundation**”).
- City of Toronto (the “**City**”).
- The Toronto Waterfront Revitalization Corporation (“**Waterfront Toronto**”).

### 1. THE GOAL:

The goal of the parties in entering into this endeavour is to convert the existing vacant space under the Gardiner Expressway from west of Strachan Avenue to Canoe Landing Park and east to Spadina Avenue (the “**Property**”) into a unique, vital, and energized public space. Such space is intended to include, among other things, a pedestrian and cycling promenade, destination space for markets, entertainment, art displays, and civic opportunities (the “**Project**”).

### 2. TERM SHEET:

The purpose of this term sheet is to clarify the roles, relationships and mutual expectations of the parties with a view to enabling the efficient and effective design and construction of the Project. It is intended that this term sheet will form the basis upon which some or all of the parties, as appropriate, will enter into a Memorandum of Understanding (“**MOU**”) and a Project Delivery Agreement to give effect to the terms hereof.

### 3. OVERVIEW OF THE ARRANGEMENTS:

The Foundation will contribute on account of the Project the sum of \$25 million (the “**Contribution**”) which will be made up of (a) a gift (the “**Gift**”) to the City expected to be \$24 million more or less plus (b) costs incurred to date or to be incurred by or on behalf of the Foundation directly in relation to the Project which will include the costs of administration and management of the Contribution process (the “**Costs**”) plus (c) any interest credited to the Reserve Fund and the Waterfront Toronto trust fund. The City will receive the Gift from the Foundation, pursuant to the terms of a legally enforceable pledge by the Foundation. The City has requested Waterfront Toronto to implement the Project for the benefit of the City and its residents. The City will in turn fund Waterfront Toronto as and when necessary to pay eligible costs incurred or to be incurred pursuant to contracts, the entering into of which has been reviewed by the Steering Committee (“**Eligible Costs**”).

Eligible Costs will include hard and soft costs relating to the design and construction of the Project. Eligible Costs shall not include any costs of the City or Waterfront Toronto (other than as set out below under the headings “**Role of Waterfront Toronto**” and “**Role of the City**”) in carrying out their roles hereunder. While costs on account of communications, program development and planning for use of Project space as it may influence design, may constitute Costs and/or Eligible Costs, except as provided in the immediately following sentence, no part of

the \$25 million shall be used on account of post-construction costs of maintenance, operations and programming. Notwithstanding the immediately preceding sentence, the \$25 million may be used for the cost of maintaining and operating any phase of the Project for the first 6 months following substantial performance. A schedule of Eligible Costs will be determined by the Steering Committee and appended to the MOU and to the Project Delivery Agreement.

#### **4. PROJECT DESIGN:**

The Project concept was developed by the team comprised of Greenberg Consultants Inc. and the Landscape Architecture firm Public Work. Greenberg Consultants Inc. and Public Work will be retained directly by Waterfront Toronto to undertake design, contract documentation, tender and award, construction contract administration, post-construction and close out services for the Project. The evolution of the design will be an iterative process guided by Waterfront Toronto and the City, with input from the Foundation through its representatives on the Steering Committee (discussed below).

#### **5. STEERING COMMITTEE:**

In order to ensure the Project is completed at a high-quality standard and to achieve efficiency during the planning and construction of the Project, representatives of the Foundation, the City and Waterfront Toronto will form a Steering Committee, which will consist of at least one representative from each of the three parties, and the chair of which will be a representative from Waterfront Toronto. With a view to ensuring that the goals of each of the parties are being met and exceeded, the Steering Committee shall provide oversight for the Project (but, however, in acting in this role, the Steering Committee shall not fetter or restrict the ability of the City to act in political or regulatory matters relating to the Project within its jurisdiction) and shall act in a cooperative and collaborative manner and will endeavour to achieve consensus to facilitate the effective and efficient delivery of the Project in keeping with the goals set out herein. In advance of any leave to construct given to Waterfront Toronto, the Steering Committee will review and approve budgets, proposals, any acquisitions of Property Interests as contemplated in paragraph 7(b) hereof, design matters, drawings and tender awards and will make recommendations and decisions to ensure that: (i) the Project is phased to meet the funding requirements of the Foundation and the cash flow requirements of Waterfront Toronto for the Project and (ii) the Project does not exceed the Donation. For clarity, Waterfront Toronto will not be required to enter in to any commitments or be required to perform any tasks related to the Project that, in aggregate, exceed the amount of the Donation. During planning and construction, Waterfront Toronto will report to the Steering Committee which will meet once every two weeks for an initial period and then as needed thereafter.

#### **6. ROLE OF THE FOUNDATION:**

The Foundation will contribute funds by way of cash and/or irrevocable letters of credit on account of the Donation to the City in increments as and when required for the City to fund Eligible Costs. The Foundation will provide the City with an initial cash installment of the Donation of approximately \$5 million. Subject to compliance with the terms of the MOU, the Foundation will provide the remaining amount of the Donation in one or more installments within thirty (30) business days from when the City requests the next installment.

## **7. ROLE OF THE CITY:**

### **a. Reserve Fund**

Subject to Council approval, the City will place the received funds into a segregated Reserve Fund, as that term is defined in Chapter 227 of the Toronto Municipal Code, such Reserve Fund to be interest bearing, with interest credited to that Reserve Fund for the benefit of the Project. Such reserve fund will allow the City to use the monies to fund only the Eligible Costs of the Project, provided that Waterfront Toronto submits invoices in compliance with the Delivery Agreement.

The City will provide to the Foundation one or more acknowledgments of receipt for only the amount of the Gift and for clarity, not for the amount of the Costs.

### **b. Land Parcels**

The Property is within the “Designated Waterfront Area” as defined by the *Toronto Waterfront Revitalization Act* and its regulations, and the City has requested Waterfront Toronto to undertake and implement the Project to the completion of construction and the warranty period, handover and assumption by the City of Toronto.

The parties understand that the City owns some but not all of the land parcels comprising the Property and where the City owns or has rights sufficient for the uses contemplated by the Project, the City will arrange to provide the use of such land or rights for the construction of the Project and, thereafter, by the public, for nominal consideration, subject to the City retaining such rights as it requires for the ongoing maintenance, repair and operation of any affected parcel. Where (i) the City does not currently own certain parcels of land located within the boundaries of the Property; or (ii) lands currently owned by the City are subject to existing third party rights or restrictions on use that may impact upon the Project, then Waterfront Toronto will attempt to secure such property interests, releases or other arrangements ("Property Interests") as are required to facilitate the Project in consultation with and on terms satisfactory to the City. Waterfront Toronto will encourage the existing third party property owners, or rights holders, to participate in the Project, contribute to funding improvements, and transfer Property Interests at nominal value. Where a Property Interest cannot be secured at nominal value, then the costs of acquiring such rights shall constitute Eligible Costs in relation to the Project.

The parties acknowledge that lands owned by the City that constitute public roads may be subject to third party statutory rights of use and access for hydro, telecommunication and other utilities. The parties further acknowledge that, prior to acquiring or assuming any interest in land in relation to the Project, the City must first be satisfied with the results of all due diligence investigations, including the environmental condition of the property in question.

### **c. Project Delivery Agreement**

The City and Waterfront Toronto will enter into a Project Delivery Agreement under which the City will assign responsibility for the development and construction of the Project to Waterfront

Toronto and grant access to Waterfront Toronto to the Property in order that Waterfront Toronto and its designees can construct the Project (the “**Project Delivery Agreement**”). The City will provide to Waterfront Toronto the \$5Million advanced by the Foundation, in advance of Waterfront Toronto executing a commitment to pay any third party costs and in all cases, prior to launching invitations for tender. Thereafter the City will fund Waterfront Toronto for Eligible Costs based upon the provisions of the Project Delivery Agreement. All funds will be held by Waterfront Toronto in an interest bearing trust account pursuant to the terms of a Trust Agreement with interest accruing to the benefit of the total contribution. It is the parties’ intention that funds that Waterfront Toronto may require to pay to any third party will be paid by the Foundation to the City (by way of cash or Letter of Credit) who will in turn pay Waterfront Toronto as per the provisions of the Project Delivery Agreement. The Project Delivery Agreement will also address the handover protocol pursuant to which the City will assume possession and control of the Project.

**d. City Staff**

The City will coordinate and cause its various departments to review the design material and other matters and issue any necessary permits to permit the efficient and effective construction of the Project in a timely manner. All overhead costs incurred by the City will be for its own account.

**8. ROLE OF WATERFRONT TORONTO:**

Waterfront Toronto will be responsible for implementing the Project, including the creation of budgets, proposals, design matters, drawings and tendering packages for approval by the Steering Committee. Waterfront Toronto will have representation on the Steering Committee and will chair its meetings. Waterfront Toronto’s mandate will include the retaining of Greenberg Consultants Inc., and Public Work. Other consultants and construction contractors required to carry out the design, development and construction of the Project will be procured using fair, competitive industry best practices for procurement of such services in accordance with Waterfront Toronto’s procurement policies. In consultation with the Steering Committee, Waterfront Toronto will also be responsible for any necessary public outreach. In accordance with its usual procedures, designs for the Project will be submitted to Waterfront Toronto’s Design Review Panel for review and comment prior to implementation. Waterfront Toronto will provide written reports to the City and the Foundation on at least a monthly basis which reports will include, at a minimum, a progress report of activities completed since the date of the last report, a completion timeline, a budget of Eligible Costs incurred to date and an estimate of Eligible Costs to complete. In all events, Waterfront Toronto will provide timely input and information to the City and the Foundation to ensure the effective and efficient delivery of the Project. All overhead costs incurred by Waterfront Toronto will be for its own account, other than in respect of the salary, benefits and overhead of a single individual retained by Waterfront Toronto as the Project Manager for the Project whose role is exclusively devoted to the Project which may be charged to the Project at a rate of 1.75 times salary.

**9. INDEMNITY:**

The City and Waterfront Toronto will provide appropriate indemnification of the Foundation against any and all liabilities that may arise through the planning, design, construction and operation of the Project. The City and Waterfront Toronto will provide (or may arrange through designers, contractors and consultants) appropriate cross indemnifications against liabilities that may arise through the planning, design, and construction of the Project including assumptions of liability, following expiry of any warranty period.

**10. TIME LINE:**

It is the intention of the parties to proceed with completion of the design phases and commence construction of the Project as soon as reasonably possible, having regard to the need to coordinate with the Gardiner Expressway rehabilitation. In all events, it is the goal that a significant first phase of the Project from west of Strachan to Bathurst will be completed and open to the public on or before July 1, 2017. The Parties will also develop the scope and schedule for the subsequent phase(s) of the Project.

**11. POST-CONSTRUCTION MAINTENANCE, OPERATIONS, & PROGRAMMING:**

It is recognized by the parties that the overall vision for the Project can only be achieved if, prior to construction, a Council-approved management and funding structure is established to achieve high quality maintenance, operation and programming of the Project (the “**Post Construction Plan**”). The parties agree that, in order to accomplish this goal, further study is needed regarding the governance and funding for operations, maintenance and programming and that Waterfront Toronto will lead this process working with City Divisions. All parties will be engaged in the process. Consideration will be given to the role of City Divisions. Consideration will also be given to a variety of options, including the creation of a wholly-owned City Services Corporation or an independent non-profit corporation or charitable foundation to maintain, operate and program the facility, and to secure private donations and sponsorships. City staff will report to Council with recommendations on this in Q1 of 2016; the MOU will be modified to reflect the Post Construction Plan. Notwithstanding the provisions of Section 6, the Foundation will provide with the signing of the MOU \$3 million on account of the initial \$5 million Donation. Upon the MOU being modified to include a Council approved Post Construction Plan on terms and conditions satisfactory to the parties hereto, the Foundation will fund the balance of the initial \$5 million. If the parties have not agreed upon the Post Construction Plan by July 1, 2016, the Foundation will make no further contributions on account of the Donation, all funds, together with interest, not then expended on account of the Project will be returned to the Foundation and the terms of the MOU and the Delivery Agreement will be at an end.