

## **12, 14 and 16 York Street Underground Pedestrian PATH Tunnel**

**Date:** June 26, 2018

**To:** Toronto and East York Community Council

**From:** Acting Director, Toronto and East York District, Transportation Services

**Wards:** Ward 20 - Trinity-Spadina, Ward 28 - Toronto Centre-Rosedale

### **SUMMARY**

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This staff report is about a matter for which Community Council has delegated authority from City Council to make a final decision.

When Council approved the development of 12, 14 and 16 York Street within the Railway Lands East in 2009, as a condition of approval the owner was required to enter into a Section 16 Agreement to secure a range of facilities and services, including the construction of a PATH tunnel connection under York Street at the owner's expense. The Section 16 Agreement was amended by an Amending Agreement dated October 26, 2015, which amongst other matters, deferred the timing for completion of the tunnel connection and imposed financial security obligations on the owner.

The purpose of this report is to seek Community Council authorization to enter into an encroachment agreement with the owner such that the developer (Lanterra Developments) be permitted to proceed with the construction of the PATH tunnel connection. The tunnel will encroach under the public right of way below York Street, to link the PATH between 12, 14, and 16 York Street and 15 York Street (Maple Leaf Square).

### **RECOMMENDATIONS**

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The Acting Director, Toronto and East York District, Transportation Services recommends that:

1. Toronto and East York Community Council authorize the City to enter into an encroachment agreement (the "Agreement") with the owner of 12, 14, and 16 York Street (the "Owner") for the purpose of permitting the Owner to construct, maintain, repair, and operate a publicly accessible underground pedestrian PATH tunnel connection fronting 12, 14 and 16 York Street, that will be situated a minimum of 2.38 metres below the surface of the road, and will encroach the full width of the public right

of way, commencing at approximately 28.23 metres south of the south curb line of Bremner Boulevard running east thereof, linking to Maple Leaf Square at 15 York Street (the "Tunnel" or "Encroachment"), and the Agreement will be substantially on the terms and conditions set out in Paragraph a. through bb. below, and any other or amended terms and conditions satisfactory to the General Manager of Transportation Services (the "GM"), and in a form satisfactory to the City Solicitor:

a. the Owner shall design, construct, maintain and repair the Encroachment, at its own expense, and the Encroachment shall be constructed to the satisfaction of the GM, the Executive Director, Engineering and Construction Services and the General Manager, Economic Development, Culture and Tourism, and shall be maintained in a state of good repair, at no expense to the City;

b. the design and construction of the Tunnel shall comply with the Canadian Highway Bridge Design Code (CAN/CSA) for highway loading purposes, as amended, superseded or replaced from time to time, including allowance for impact factors;

c. the Owner shall obtain all Public Utility Coordinating Committee clearances and/or sign-offs from the public utility companies and satisfy any requirements they may have;

d. the Owner shall submit drawings to Transportation Services to obtain compliance with the Ministry of the Environment and Climate Change for environmental compliance approvals, and all work shall be in compliance with any requirements of Toronto Water;

e. the Owner shall obtain approval and all necessary permits for the construction of the Tunnel from the Toronto Building Division, if required;

f. prior to commencement of construction, a Construction Permit shall be obtained by the Owner in accordance with Article III of Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code;

g. the Owner shall adhere to the accepted Traffic Management Plan, Construction Management Plan, Construction Schedule letter and Traffic Assessment Study outlining the proposed tunnel installation and shall submit revised plans, as advised, which content shall be to the satisfaction of the GM prior to the issuance of a Construction Permit;

h. the City shall maintain the right to place pipes, cables, wires, poles and other infrastructure within the Encroachment and shall be entitled to attach infrastructure, including that required by TTC, if necessary, to the exterior of the Encroachment;

i. the City shall be released from and against all actions, suits, claims or demands and from all loss, costs, damages and expenses that may result from such permission granted, in a form and content satisfactory to the City Solicitor;

j. the Owner shall indemnify the City from and against all actions, suits, claims or demands and from all loss, costs, damages and expenses that may result from such permission granted, any matter related to the Tunnel, and any failure of the Owner to comply with the Agreement, in a form and content satisfactory to the City Solicitor;

k. the Owner shall provide and maintain public liability and property damage insurance with an insurer satisfactory to the GM for the lifetime of the Agreement in a form as approved by the Interim Chief Financial Officer, including a cross-liability /severability of interest clause, a provision that the insurance is primary before the insurance of the City, and a 30 day prior notice of cancelation/renewal clause, and in the amount not less than \$10 million or such greater amount as the Interim Chief Financial Officer may require;

l. the Owner shall provide as-built drawings within 60 days of completing the construction of the Tunnel to Survey and Mapping, Attention: Mr. Michael Kolominsky, Utility Mapping Supervisor, Engineering Design, 275 Merton Street, 1st Floor, Toronto, Ontario M4S 1A7, as well as to Transportation Services, Right of Way Management, Construction Activities, 55 John Street, 17th Floor, Metro Hall, Toronto, Ontario M5V 3C6;

m. the Owner shall submit a reference plan for the Tunnel which includes the area of the Tunnel in m2, upon completion of the Tunnel;

n. the Owner will be responsible for restoration to the road pavement, to the satisfaction of the GM, upon completion of the installation of the Encroachment;

o. the Owner shall pay (i) an annual licence fee in the amount of \$22,000.00 plus applicable HST, and (ii) any applicable real property taxes exigible. The licence shall increase annually by an amount equivalent to the percentage increase in the Consumer Price Index (all items – Toronto), and shall further be recalculated every ten (10) years based on the applicable fee of the City for private tunnel encroachments, as prescribed under Chapter 441, Fees and Charges, Appendix C - Schedule 2, Transportation Services, of the City's Municipal Code, as amended or replaced;

p. the life of the Agreement to be limited to the removal of the Tunnel or the date of the demolition of either of the buildings at 12, 14 and 16 York Street and 15 York Street (the "Buildings"), whichever occurs first;

q. the Owner shall, at its own cost, charge and expense and to the satisfaction of the GM, alter or remove the Encroachment on: (i) the demolition of either of the Buildings, or (ii) if deemed necessary for municipal purposes as determined from the GM, acting reasonably, upon receiving reasonable notice in writing by the GM, and thereafter, the Owner shall restore the street pursuant to Article VIII of Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code;

r. the Owner agrees that the pedestrian Tunnel shall, for the life of the Tunnel and the Buildings and as long as public access exists between the Tunnel and

the PATH system via the 12, 14 and 16 York Street and 15 York Street remain publicly accessible;

s. the Owner agrees that the City shall have the right of entry on the lands and premises at 12, 14 and 16 York Street and on the Encroachment, to acquire access to the Encroachment for the purposes of inspection, repair, or removal of the Encroachment or performing any other activity permitted by the City under the Agreement, on terms acceptable to the GM;

t. the Agreement shall include rights and remedies acceptable to the GM including the right, but not the obligation, of the City to remedy any failure of the Owner to comply with the Agreement, and the costs incurred by the City in enforcing the Agreement shall be payable by the Owner;

u. the City shall not be responsible for repairing or replacing the Encroachment damaged a result of street repairs or reconstruction;

v. shall require the Owner to adhere to all applicable federal, provincial or municipal laws, by-laws, policies including the City of Toronto Municipal Code and Transportation Services' standard process for acquisition of encroachment agreements;

w. the provisions of Attachment A to this report shall be substantially incorporated into the Agreement to the satisfaction of the GM;

x. the Owner shall comply with all requirements contained in the Section 16 Agreement dated April 30, 2009, as amended by an Amending Agreement dated October 26, 2015, and as same may be further amended, from time to time, including without limitation, the posting of financial security, the refinement of the financial security, the construction of the proposed future PATH connection within the Commercial Phase, peer review of the design by the City's peer reviewer, at the Owner's expense, and compliance with all accepted plans and drawings;

y. the Owner shall not make or permit any additions or modifications to the Encroachment beyond what is permitted under the terms of the Agreement;

z. the Agreement shall be registered on title to the Owner's property and other affected properties deemed necessary by the City Solicitor, at the expense of the Owner, with appropriate title opinions provided to the satisfaction of the City Solicitor as may be required by the City Solicitor;

aa. the Owner shall pay all costs associated with preparing the Agreement and the registration of the Agreement on title; and

bb. the Owner shall accept any other terms and conditions considered appropriate by the GM or the City Solicitor.

2. Toronto and East York Community Council direct the GM to extend the Agreement to the new owner, in the event of sale or transfer of the property abutting or encumbered by the Encroachment, subject to the prior approval of the General Manager of Transportation Services, and provided in all cases the transferee or assignee enters into an assumption agreement with the City to assume the obligations under the Agreement, in form satisfactory to the City.

3. Toronto and East York Community Council authorize the GM to administer and manage the Agreement including the provision of any consents, approvals, notices provided that the GM may, at any time, refer consideration of such matters (including their content) to the Toronto and East York Community Council for its determination and direction.

4. Toronto and East York Community Council authorize the City Solicitor to prepare the Agreement, and arrange execution and registration of the Agreement as required by this report.

## **FINANCIAL IMPACT**

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The construction of the PATH system connection via a partial closure will result in incremental additional costs incurred by the owner totaling \$3,454,518. It is anticipated that road occupancy fees incurred will be in the amount of \$1,779,274. Rather than requiring the owner to pay these fees to the City, only for the City to then provide a financial contribution to the owner in the amount of \$3,454,518, it is proposed that the fees up to an amount of \$1,779,274 be waived, or in essence off-set such that there would be a maximum payment by the City to the owner of \$1,675,244 toward the incremental costs to be incurred by the owner arising from construction the York Street PATH tunnel connection with a partial closure rather than a full closure.

At its meeting on June 19, 2018, Item EX35.37, the Executive Committee recommended that City Council amend the 2018-2027 Capital Budget and Plan for Transportation Services to approve the total project costs of \$1,675,244 and the cash flow commitments of \$1,675,244 in 2019, fully funded by debt. This item will be considered by City Council on June 26, 2018.

The Owner shall pay an annual licence fee of \$22,000 which shall increase each year by an amount equivalent to the percentage increase in the Consumer Price Index (all items - Toronto), and shall be subject to recalculation every 10 years.

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

## **DECISION HISTORY**

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At its meeting of April 29 and 30, 2009, City Council approved an Official Plan Amendment (amendment to Railway Lands East Secondary Plan) and rezoning

application for a 31-storey office building, a 65-storey residential condominium building and a 55-storey residential condominium on the lands now known municipally as 12, 14 and 16 York Street. As part of the approval the owner was required to enter into a Section 16 Agreement to secure a range of facilities and services, including a publicly accessible PATH walkway under York Street.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2009.TE25.10>

At its meeting on February 19 and 20, 2014, City Council approved amendments of the Section 16 Agreement applicable to 12, 14 and 16 York Street (formerly 16 York Street) to extend the timeframe within which the owner is required to provide a publicly accessible PATH system connection under York Street and into 15 York Street. The amended Section 16 Agreement required that PATH tunnel construction would be completed within a 9 month period, the closure of York Street would be for no longer than 6 months and construction would be complete by December 31, 2018. Financial securities were required to guarantee the Owner's obligations.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TE29.4>

At its meeting on May 22, 23, and 24, 2018, City Council approved further amendments of the Section 16 Agreement applicable to 12, 14 and 16 York Street (formerly 16 York Street) to allow construction of the PATH system tunnel connection via a partial closure of York Street, rather than a full closure, and completion by May 31, 2020. At that meeting, City Council agreed to a financial contribution by the City towards the Tunnel construction, subject to Council approval of the required project costs and cash flow funding commitments within the 2018-2027 Capital Budget and Plan for Transportation Services.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TE32.57>

## **COMMENTS**

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### **Background**

The provision of a below-grade PATH system connection under York Street between Bremner Boulevard and Lake Shore Boulevard has long been envisioned as a key objective for redevelopment in the Railway Lands East, first identified as part of the 1996 Revised Precinct B Agreement. A below grade PATH connection between 15 York Street and the site now comprising 12, 14 and 16 York Street was identified in the Precinct B concept plan for pedestrian routes.

Consequently when Council approved the development of 12, 14 and 16 York Street in 2009, as a condition of approval the Owner was required to enter into a Section 16 Agreement dated April 30, 2009 to secure a range of facilities and services, including the construction of the York Street PATH connection at the developer's expense. A Section 16 Agreement under the City of Toronto Act is similar to a Section 37 Agreement under the Planning Act, which secures community benefits in exchange for an increase in height and/or density.

The development of 12, 14 and 16 York Street has proceed in three Phases. Phase 1 and 2, included the construction of each of the residential condominium buildings (now complete). Phase 3 included construction of the office building (in progress). The York

Street PATH tunnel connection was originally required to be completed prior to the condominium registration for Phase 2.

In 2014, the developer, Lanterra Developments, on behalf of the Owner initiated discussions with City staff about the construction of the York Street PATH tunnel connection in order to meet the obligations under the Section 16 Agreement, and to obtain necessary approvals to proceed. However, due to current and planned road closures in the area, it was determined by the City that a closure of York Street should not occur until after the Pan-Am Games in the summer of 2015, and that the construction of the PATH tunnel connection should not delay the completion of Phase 2 of the development.

Accordingly, Council authorized an amendment to the Section 16 Agreement to defer completion of the construction of the PATH tunnel connection to no later than December 31, 2018, and to secure financial securities in the amount of \$21 Million from the Owner to guarantee the Owner's obligations. The amendments also contemplated the full closure of York Street for up to six (6) months for construction. On October 26, 2015, an amending agreement to the Section 16 Agreement was entered into with the Owner.

York Street is a major arterial road, providing a direct link from the downtown core to the F.G. Gardiner Expressway and Lake Shore Boulevard. A full closure would have a significant negative impact on the road network and on adjacent residents, venues, and businesses

As the construction of the York Street PATH tunnel connection was identified as an opportunity to re-evaluate the potential congestion impacts of a full closure, City Staff and the developer, Lanterra Developments, worked collaboratively to explore alternative construction phasing and methodologies that would permit construction of the PATH connection, while maintaining a minimum of one lane of traffic in each direction.

This revised partial closure approach, along with other matters, was brought forward to TEYCC in May (TE32.57) and was approved, as amended, by Council on May 22, 23 and 24, 2018.

### **Encroachment Agreement**

An encroachment agreement between the City and the Owner is required in order to permit the construction of the pedestrian Tunnel within the City's right of way, as well as to set out the Owner's responsibilities for the maintenance, repair, operation and use of the Tunnel, and to secure public accessibility and use of the Tunnel.

The Tunnel will be situated a minimum of 2.38 metres below grade, and will encroach the full width of the public right of way. The Tunnel will commence approximately 28.23 metres south of the south curb line of Bremner Boulevard running east thereof connecting 12, 14 and 16 York Street and 15 York Street (Maple Leaf Square), as shown hatched on the Site Map attached as Attachment B to this report.

As there may also be potential impacts to existing utility infrastructure which are currently unknown, it will be the Owner's responsibility to undergo a public utility review with a view of obtaining clearances from the affected utility agencies and satisfying their

requirements prior to the issuance of a construction permit authorizing work within the public right of way.

### **Applicable Regulations**

The construction and maintenance of the tunnel encroachment can be considered under the criteria set out in Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code, which requires Transportation Services to report on this application to Community Council.

### **Reasons for Approval**

Transportation Services has reviewed the application and determined that the construction and maintenance of the tunnel encroachment linking 12, 14, and 16 York Street to 15 York Street, will not impact negatively on the public right of way.

## **CONTACT**

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Andre Filippetti  
Manager, Right of Way Management  
Transportation Services  
Tel: 416-392-1525  
Email: andre.filippetti@toronto.ca

## **SIGNATURE**

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Dave Twaddle, C.E.T.  
Acting Director, Transportation Services  
Toronto and East York District

## **ATTACHMENTS**

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Attachment A – Additional Conditions for the Encroachment Agreement  
Attachment B - Site Map

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## ATTACHMENT A - Additional Conditions for the Encroachment Agreement

1. These standard terms and conditions apply to all work conducted by or on behalf of the applicant.
2. Unless otherwise specifically provided in these standard terms and conditions, the terms specified herein have the same meaning given to them in Chapter 743, Streets and Sidewalks, Use of.
3. All street work shall conform to all applicable federal, provincial and municipal statutes, laws and by-laws and other applicable legal requirements.
4. All street work shall conform to City of Toronto construction standards and specifications, and shall be conducted and completed to the satisfaction of the General Manager.
5. All street work shall be performed in a manner that safeguards and protects all other equipment, facilities and improvements of any kind ("improvements") present in, on, over, under, across, or along the street and the environment.
6. The applicant shall take whatever steps are necessary to ensure the protection of the public.
7. The applicant shall not unduly interfere with the use of the street for free passage by the public.
8. The applicant shall make all necessary arrangements with traffic, police and fire authorities for the placing of barricades, notices, warning lights and signs and that all such barricades, notices, warning lights and signs shall conform with applicable law.

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9. No street work shall block or impair the entrance to any premises abutting the work location unless the applicant has obtained and filed with the application for the permit the consent in writing of the owner and occupant of such premises.
10. All street work shall be conducted in a manner so as to maintain access for emergency vehicles.
11. The street work shall be completed without delay.
12. The permit shall not authorize occupying a larger portion of the street or extend for a longer period of time than may be necessary in the opinion of the General Manager, having due regard to the applicant's needs and the safety and convenience of the public.

13. After completing any street work, the applicant shall restore and/or leave the street in substantially the same condition in which it was before such street work was undertaken by the applicant, free from nuisance and to the satisfaction of the General Manager. If the applicant fails to repair and restore any street to the satisfaction of the General Manager within 48 hours of being notified by the City, the City may undertake such repairs and charge all costs owing to the applicant, and may draw on any financial security or deposits submitted by the applicant.
14. The applicant shall maintain the equipment in good and proper repair and in a condition satisfactory to the General Manager.
15. Should the General Manager deem it necessary for the equipment to be removed or altered in an emergency, including repairs or maintenance to equipment owned or operated by the City or any agency, board or commission of the City, the General Manager, without notice to the applicant, may alter or remove, or cause to be altered or removed, the equipment and, subject to the requirements of any applicable law or existing agreement, the cost of such alteration or removal of the equipment shall be borne by the applicant.
16. Should the General Manager deem it necessary for the equipment to be removed or altered for any municipal purpose, including installation or alteration of new or existing plant by any agency, board or commission, the General Manager may upon three months notice in writing to the applicant, alter or remove, or cause to be altered or removed, the equipment or such portions of same not already altered or removed by the applicant, and subject to the requirements of any applicable law or existing agreement, the cost of such alteration or removal of the equipment shall be borne by the applicant.
17. If the City requires that any street work be stopped, the applicant shall cease such street work following notice to the applicant provided by the General Manager.

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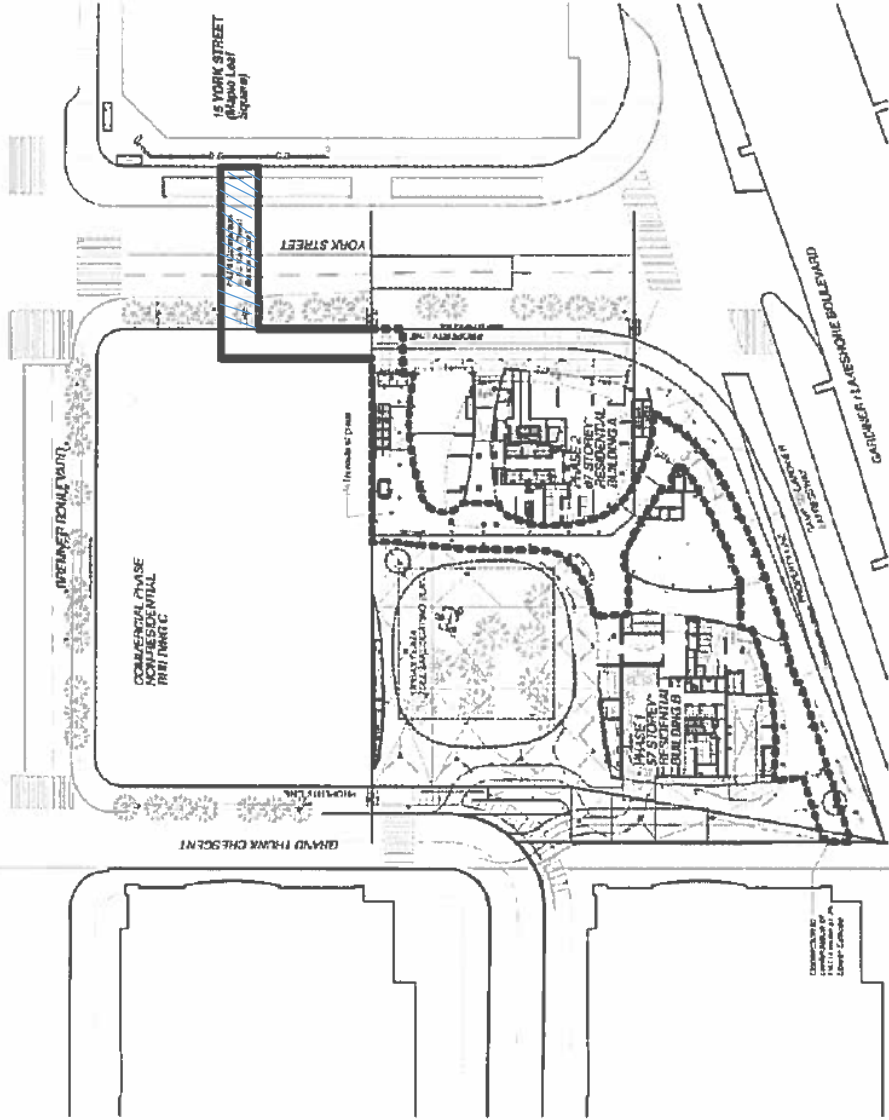
18. The applicant shall be at all times responsible for all aspects of the street work, including the cost of such street work.
19. The applicant shall notify the City promptly of any damage caused by the applicant in connection with its street work.
20. The City has made no representations or warranties as to the state of repair of the streets or the suitability of the streets for any business, activity or purpose whatsoever, and the applicant hereby agrees to take the streets on an "as is" basis for the purpose of the carrying out of the applicant's street work and the City is not responsible, either directly or indirectly, for any damage to property or injury to a person, including death, arising from the escape, discharge or release of any hazardous substance from its streets.
21. The applicant shall conform and shall be responsible for the conformance by its officers, employees, agents, contractors and invitees to all health and safety laws including any

regulations requiring installation of safety devices or appliances, and any applicable traffic laws or regulations (collectively "safety rules"). If in the opinion of the City the likelihood of harm to persons or property appears imminent, the City may suspend street work performed by or on behalf of the applicant where there appears to be a lack of compliance with the safety rules, or because conditions of danger exist that would likely result in injury to any person or property. Such suspension shall continue until the lack of compliance or danger is eliminated.

22. For the purpose of this provision, "hazardous substance" means any hazardous substance and includes, but is not limited to, radioactive substances, petroleum products and byproducts, industrial wastes, contaminants, pollutants, dangerous substances, and toxic substances, as defined in or pursuant to any law, ordinance, rule, regulation, by-law or code, whether federal, provincial or municipal. The applicant agrees to assume all environmental liability relating to its work in, on, over, under, across, or along the streets, including but not limited to any liability for clean-up of any hazardous substance in, on, under, along, across and around streets that result from:
  - (a) The operations of the applicant in, on, over, under, along, across or around the streets; or
  - (b) Any products or goods brought in, on, over, under, along, across or around the streets by the applicant, or by any other person with the express or implied consent of the applicant.
23. The applicant shall in writing, prior to any permit being granted by the General Manager, indemnify and save harmless the City, its elected and appointed officials, officers, employees, directors and agents from and against all actions, claims, executions, demands, damages, liabilities, liens, costs, expenses direct or indirect (including reasonable legal fees and disbursements), and losses whatsoever incurred by the City, its elected and appointed officials, officers, employees, directors and agents in connection with the issuing of the permit, the conduct of the applicant's street work or the use of applicant's equipment, including claims in respect of property damage or personal injury, including death, and will pay to the City and to each such official, servant or agent on demand any loss, costs, damages and expenses, including legal fees and disbursements, that may be sustained, incurred or paid by the City or by any of its officers, servants and agents in consequence of any such action, claim, lien, execution or demand, including any monies paid or payable by the City or any of its officials, officers, servants or agents in settlement or discharge or on account thereof, provided that on default of such payment all loss, costs, damages and expenses and all such monies so paid or payable may be deducted from any security held by the City on account of the permit of the street work.
24. The City shall not be liable in any way for indirect or consequential losses or damages, or damages for pure economic loss, howsoever caused or contributed to, in connection with the applicant's street work.

25. The applicant shall, at their own expense and to the satisfaction of the General Manager, procure and carry, or cause to be procured and carried and paid for, full workers compensation coverage for itself and all workers, employees, and others engaged in or upon any street work.
  26. The applicant shall deliver, when required by the General Manager, a performance bond or letter of credit in a form satisfactory to the City Treasurer and in an amount which is satisfactory to the General Manager to ensure proper compliance with this Chapter.
  27. The applicant shall at all times during the term of the permit and subsequent to the completion of the street work provide an accurate and timely in-house "locate" service or be a member of a "locate" service, in which case the applicant shall advise the General Manager of its membership in such a service. Should the applicant fail to comply with this provision, the City shall not be required to make any special effort to determine or confirm the location of the equipment. The applicant shall, at the request of the City or any third party, provide or cause to be provided accurate on-site locates within 14 consecutive days of receiving a request for such information.
  28. The applicant shall respond within 14 consecutive days to any request from the City for a mark-up of municipal infrastructure design drawings showing the location of any portion of the equipment located in, on, under, over, across, or along the streets shown on the plans, and shall provide such accurate and detailed information as may be required by the General Manager.
  29. The applicant will, at its sole cost and expense, maintain the equipment according to the drawings or subsequent "as built" drawings and in a state of good order, condition and repair, to the full satisfaction of the General Manager, acting reasonably.
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ATTACHMENT B - SITE MAP



PATH Tunnel Connection under York Street to 15 York Street

**16 York Street**

File # 08 100769 02

**PATH Tunnel Connection**

Applicant's Submitted Drawing

Not to Scale  
01/10/2014

