

## **Encroachment Agreement – 160 Front Street West (Pedestrian Tunnel)**

**Date:** June 4, 2021

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

**From:** Director, Permits and Enforcement, Transportation Services

**Wards:** Ward 10 – Spadina - Fort York

### **SUMMARY**

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

The Cadillac Fairview Corporation Limited ("CF") has submitted an application on behalf of the registered owner of 160 Front Street West to construct a subsurface pedestrian tunnel across Simcoe Street between the owner's new development at 160 Front Street West ("160 Front") and the existing property at 200 Front Street West ("Simcoe Place"). The proposed pedestrian tunnel will connect the owner's 160 Front development to the PATH pedestrian network and will expand the City's pedestrian PATH network.

The purpose of this report is to seek Community Council authorization to enter into an encroachment agreement with the owner to permit the construction of the tunnel under the Simcoe Street public right-of-way.

### **RECOMMENDATIONS**

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The Director, Permits and Enforcement, Transportation Services, recommends that:

1. Toronto and East York Community Council authorize the City to enter into an encroachment agreement (the "Agreement") with the owners of 160 Front Street West (the "Owner") to permit the Owner to construct, maintain, repair and operate a publicly accessible underground pedestrian PATH tunnel, as shown in Appendix "A" and "B", to be located north of Front Street West across Simcoe Street, connecting 160 Front Street West and 200 Front Street West (the "Encroachment" or "Tunnel"), substantially on the major terms and conditions set out below, and including such other terms and conditions as deemed appropriate by the General Manager of Transportation Services (the "GM"), and in a form satisfactory to the City Solicitor:

- a. the Owner shall, at its own expense, design, construct, repair and maintain the Encroachment in a state of good repair, to the satisfaction of the GM, and shall assume full and sole responsibility for the condition, operation, repair, replacement, maintenance and management of the Encroachment, at no expense to the City;
- b. the design and construction of the Encroachment shall comply with the Canadian Highway Bridge Design Code (CAN/CSA), including without limitation for highway loading purposes, including allowance for impact factors, as same may be amended, superseded or replaced from time to time;
- 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 ensure any design of the Tunnel that impacts Toronto Water's infrastructure shall meet Toronto Water's standards and approval conditions, as determined by Toronto Water at their sole discretion;
- e. where the Municipal Consent Requirements' preferred depth of cover cannot be met, the Owner shall secure a consent/exemption from the GM prior to submission of a permit application;
- f. the Owner shall obtain approval and all necessary permits for the construction of the Encroachment from the Toronto Building Division, if required;
- g. prior to commencement of construction, a street work permit shall be obtained by the Owner in accordance with Article III of Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code;
- h. the Owner shall submit and adhere to an accepted Traffic Management Plan, Construction Management Plan, Construction Schedule letter and Traffic Assessment Study outlining the proposed Tunnel construction/installation and advise on the impacts within the public right-of-way in the area of the proposed Encroachment, which content shall be to the satisfaction of the GM, prior to the issuance of a Construction Permit;
- i. the Owner shall secure the consent of the owner of 200 Front Street West for the physical linkage of the Tunnel to 200 Front Street West, prior to commencing the Tunnel, which consent shall be in a form satisfactory to the GM;
- j. the Owner shall pay (i) an annual licence fee in the amount of \$89,441.00 plus applicable HST, and (ii) any applicable real property taxes eligible. The licence fee 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;

- k. the Owner agrees that the pedestrian Tunnel shall remain publicly accessible throughout the term of the Agreement;
- l. the City shall maintain the right to place or affix pipes, cables, wires, poles and other infrastructure within/to, over or under the Encroachment;
- m. the City shall not be responsible for repairing or replacing the Encroachment damaged as a result of street repairs, construction or other municipal activities on the public right-of-way;
- n. 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 the permission granted, which release shall be in a form and content satisfactory to the City Solicitor;
- o. 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 or arise from the permission granted, any matter related to the Encroachment, and any failure of the Owner to comply with the Agreement, which indemnity shall be in a form and content satisfactory to the City Solicitor;
- p. 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 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 Chief Financial Officer may require;
- q. the Owner shall provide and maintain an irrevocable letter of credit, in an amount satisfactory to the GM, to be retained by the City, for the duration of construction of the pedestrian Tunnel within the Simcoe Street right-of-way, to secure against any damage to the City right-of-way and to guarantee construction of the Tunnel and that the work within the public right-of-way is completed to the City's satisfaction, including the restoration of the public right-of-way, to the satisfaction of the GM; failing which the City may in its sole discretion draw down upon the letter of credit in such amount(s) as required to complete the Owner's obligations under the Agreement. Prior to the release of the letter of credit the Owner will be required to provide a construction sign-off letter stamped and signed by the structural engineering firm that designed the Tunnel which states that the Tunnel is safe and ready to be opened to pedestrian traffic, along with two sets of as-built drawings;
- r. the Owner shall pay the City all costs related to the engineering review and inspection fees;
- s. the Owner shall provide as-built drawings within 60 days of completing the construction of the Encroachment to Survey and Mapping at [engsvy@toronto.ca](mailto:engsvy@toronto.ca),

as well as to Transportation Services, Right of Way Management, Construction Activities, 55 John Street, 17th Floor, Metro Hall, Toronto, Ontario M5V 3C6;

t. the Owner shall submit a reference plan for the Tunnel which includes the area of the Tunnel in m<sup>2</sup>, upon completion of the Tunnel;

u. the Owner will be responsible for the restoration of the road pavement, including adjacent sidewalks and boulevards, if necessary, to the satisfaction of the GM, upon completion of the installation of the Tunnel;

v. the Owner shall not make or permit any additions or modifications to the Encroachment beyond what is permitted under the terms of the Agreement without the City's consent, which may be unduly delayed or arbitrarily withheld;

w. the term of the Agreement shall expire on the earlier of: (i) the removal or abandonment of the Tunnel, if permitted under the Agreement (ii) the date of demolition of either of the buildings located at 160 Front Street West and 200 Front Street West (the "Buildings"), where such Building(s) is or are not being re-constructed; (iii) if deemed necessary for municipal purposes as determined by the GM, acting reasonably, upon receiving not less than 180 days' notice in writing from the GM, or (iv) in the event that the GM determines there is an emergency that presents a danger to the public health or safety, upon such notice as the GM determines appropriate in the circumstances, if any;

x. at the expiration or earlier termination of the Agreement, at the City's sole discretion, the City may require the Owner to alter, demolish and/or remove the Encroachment at the Owner's sole cost and expense, to the satisfaction of the GM, and after the removal of the Encroachment, the Owner shall restore the street pursuant to Article VIII of Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code;

y. the Owner agrees that the City shall have the right of entry onto the lands and building located 160 Front Street West 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;

z. 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;

aa. shall require the Owner to adhere to 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;

bb. the provisions of Appendix A of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, attached as Appendix "C" to this report, shall be substantially incorporated into the Agreement to the satisfaction of the GM;

cc. the Owner shall, at its own cost, charge and expense, and to the satisfaction of the GM, alter or remove the Encroachment if deemed necessary for municipal purposes by the GM, upon receiving not less than 90 days' notice in writing from the GM, or such other time as deemed reasonable by the GM;

dd. 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;

ee. the Owner shall pay all cost associated with the preparation of the Agreement and the registration of the Agreement on title; and

ff. the Owner shall accept such additional terms and conditions as the GM or the City Solicitor may deem necessary in the interest of the City.

2. Toronto and East York Community Council direct the GM to extend the Agreement to the new owner of 160 Front Street West, in the event of sale or transfer of the property at 160 Front Street West, subject to the prior approval of the GM, 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.

## **FINANCIAL IMPACT**

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There is no financial impact resulting from the adoption of the recommendations in this report, as the Owner will be responsible for the entire cost for the construction of the pedestrian Tunnel, as well as its maintenance, repair and operation.

The Owner shall pay an annual licence fee of \$89,441.00 annually, which shall increase annually 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.

## **DECISION HISTORY**

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City Council, at its meeting on August 25, 26, 27 and 28, 2014, adopted Item TE34.10 entitled "156-174 Front Street West and 43-51 Simcoe Street - Zoning Amendment Application" which amended Zoning By-laws 438-86, for the lands municipally known as 156-174 Front Street West and 43-51 Simcoe Street.

## COMMENTS

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An application has been received from CF on behalf of the Owner to construct a pedestrian PATH Tunnel underneath Simcoe Street connecting 160 Front and Simcoe Place. The Tunnel will be publicly accessible, and will improve the connectivity of the City's PATH network by improving important linkages to and from Union Station.

The proposed pedestrian tunnel will be located approximately 9.2 metres north of the Front Street West curb on the west side of Simcoe Street, crossing Simcoe Street to approximately 4.1 m north of the Front Street West curb on the east side of Simcoe Street. See Appendix "A" and "B" for the general location of the Tunnel.

In order to meet the requirements of the Accessibility for Ontarians with Disabilities Act, the Tunnel requires a new elevator. The new elevator shaft structure is unable to meet the preferred minimum 1 metre depth of cover as outlined in the Municipal Consent Requirements ("MCR"). The elevator shaft will be less than the preferred depth of cover of 1 metre beneath Simcoe Street at 725 millimetres from the top of the curb. In order to connect the Tunnel to the existing concourse level of Simcoe Place, the overall Tunnel cannot be lowered any further. The elevator shaft must provide sufficient overhead clearance in order to meet pedestrian height, operational and Technical Standards and Safety Authority requirements.

The design of the Tunnel has been submitted as double stamped, signed, and dated by professional engineers. The overall area of less than 1 m depth of cover to the elevator roof slab is approximately 3900 mm wide (east-west) and 3250 mm long (north-south). The elevator structure will be designed to handle the traffic loading requirements for Simcoe Street. The elevator structure will also be designed to consider effects of corrosion due to the proximity of the surface salting operations during the winter season. The final design has been optimized from the original design to reduce the height of the elevator shaft as much as possible to increase depth of cover. The Tunnel structure is generally able to meet the preferred depth of cover requirements outlined in the MCR.

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.

In order to construct the Tunnel, the closure of Simcoe Street will be required in various phases between August 2021 and January 2023. There is a separate report, entitled Construction Staging Area – 160 Front Street West (Simcoe Street) Underground Tunnel from the Acting Director, Traffic Management, Transportation Services being presented to Community Council seeking approval for the road closure.

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 and operation of the

Tunnel. The encroachment agreement will also secure public accessibility and use of the Tunnel.

The construction and maintenance of the Encroachment cannot be considered under the criteria set out in Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code. As such, Transportation Services is required to report on this application to Community Council.

Transportation Services has reviewed the application and determined that construction of the proposed Tunnel does not impact the public right-of-way in a negative manner and therefore recommends approval of the application. The Owner is required to satisfy all conditions of approval set out in the recommendations of this report and must comply with Transportation Services procedures for granting approval of tunnels.

The Ward Councillor has been advised of the recommendations of this report.

## **CONTACT**

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Elio Capizzano, Manager Permits and Enforcement, Transportation Services, 416-392-7878, Elio.Capizzano@toronto.ca

## **SIGNATURE**

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Dave J. Twaddle  
Director, Permits and Enforcement, Transportation Services

## **ATTACHMENTS**

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Appendix 'A' – Site Plans 1  
Appendix 'B' – Cross Section Drawing  
Appendix 'C' – Appendix A of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of

## Appendix 'A' – Site Plan 1

Figure 1: Site plan showing pedestrian PATH Tunnel underneath Simcoe Street connecting 160 Front and Simcoe Place.

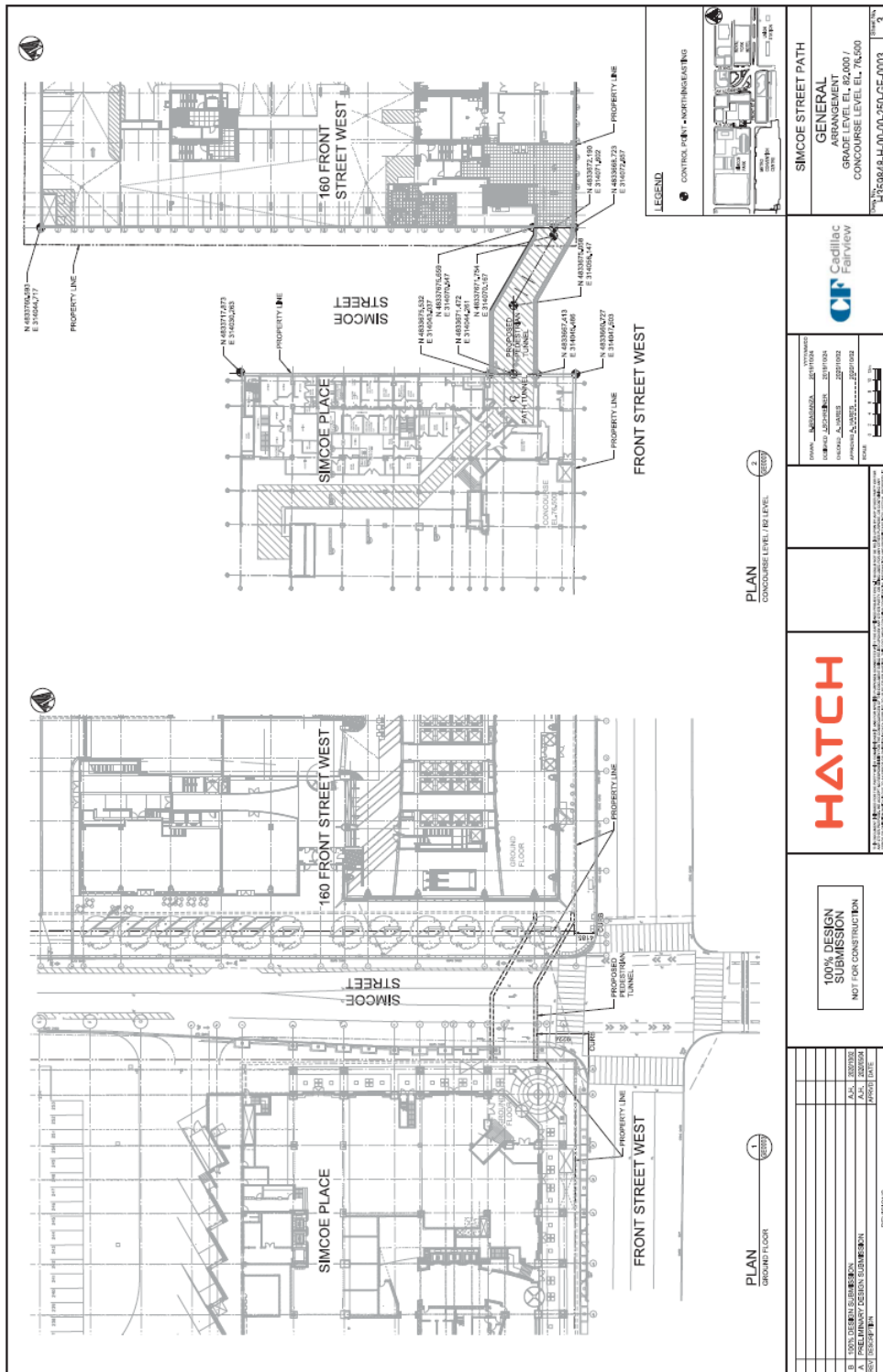
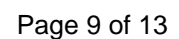


Figure 2: Site plan and cross section of pedestrian PATH Tunnel underneath Simcoe Street connecting 160 Front and Simcoe Place.



## **Appendix 'C' – Appendix A of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of**

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.
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.

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 by-products, 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 Controller 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.