

Encroachment Agreements - North Bay Pedestrian Bridge connecting 141 Bay Street and Union Station, and Yonge Street Pedestrian Bridge connecting 141 Bay Street and 1 The Esplanade

Date: May 9, 2022

To: Toronto East York Community Council

From: Director, Permits and Enforcement, Transportation Services

Wards: Ward 10 - Spadina-Fort York

SUMMARY

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

Transportation Services has reviewed a request from 141 Bay Street Property I Inc. and Hines 141 Bay Property Inc., the registered owner of the property at 141 Bay Street, for the construction and maintenance of two publicly accessible pedestrian bridges. One bridge connection will be from 141 Bay Street to Union Station, which will encroach over the Bay Street public right-of-way, and the second bridge connection will be from 141 Bay Street to the existing structure at 1 The Esplanade, which will encroach over the Yonge Street public right-of-way.

The purpose of this report is to seek authority to enter into two encroachment agreements with the owner of 141 Bay Street to permit the construction and maintenance of the bridge over the Bay Street public right-of-way and the bridge over the Yonge Street public right-of-way.

RECOMMENDATIONS

The Director Permits and Enforcement, Transportation Services recommends that:

1. Toronto and East York Community Council authorize the City to enter into two encroachment agreements (individually, the "Agreement" or collectively, the "Agreements") with the owners of 141 Bay Street (collectively, the "Applicant") to permit the Applicant to construct, maintain, repair and operate two publicly accessible pedestrian bridges: (i) connecting 141 Bay Street and Union Station (the "North Bay Pedestrian Bridge") and (ii) connecting 141 Bay Street to 1 The Esplanade (the "Yonge

Street Pedestrian Bridge") (also referred to individually as a "Bridge" or "Encroachment", or collectively, as the "Bridges" or "Encroachments"), substantially on the major terms and conditions set out in Attachment 1 and Attachment 2, as the case may be, and on such other terms and conditions as may be acceptable to the General Manager of Transportation Services (the "GM"), and in a form satisfactory to the City Solicitor.

2. Toronto and East York Community Council direct the GM to extend the Agreement to the new owner of 141 Bay Street, in the event of sale or transfer of the property at 141 Bay Street, 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, as well as the obligations under the construction and licence agreement for the Bridges for the portion of the Bridges on City-owned lands, in a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

The Agreement for the North Bay Pedestrian Bridge will generate an estimated revenue of \$8,500.88 annually and shall increase annually by an amount equivalent to the percentage increase in the Consumer Price Index.

The Agreement for the Yonge Street Pedestrian Bridge will generate an estimated revenue of \$10,368.94 annually and shall increase annually by an amount equivalent to the percentage increase in the Consumer Price Index

The Applicant will be responsible for all associated costs of constructing and maintaining both pedestrian Bridges.

DECISION HISTORY

At its meeting of December 15, 16 and 17, 2021, City Council adopted Item GL27.7 "Union Station North Bay Pedestrian Bridge Connection", and approved a nominal sum construction and licence agreement of a publicly accessible pedestrian bridge connection between 141 Bay Street and Union Station on City-owned land at Union Station.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.GL27.7>

At its meeting of November 8 and 9, 2016, City Council adopted Item TE19.6 "Final Report - 141 Bay Street - Zoning Amendment Application" and amended the zoning by-law for the lands at 141 Bay Street, subject to the execution of a Section 37 agreement securing certain matters, including construction and maintenance of a P.A.T.H. connection between the 141 Bay Street development and Union Station.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.TE19.6>

At its meeting of July 12, 13, 14 and 15, 2016, City Council adopted Item ED13.5 "Imagination, Manufacturing, Innovation, Technology (I.M.I.T.) Program Application - 45 and 141 Bay Street," and approved the application submitted by Ivanhoe Cambridge and Metrolinx for Imagination, Manufacturing, Innovation, Technology Development Grants and Brownfield Remediation Tax Assistance as a Transformative Project, subject to certain conditions, including the completion of a P.A.T.H. connection to Union Station.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.ED13.5>

COMMENTS

The Applicant is developing a new multi-storey building at 141 Bay Street, Toronto (as shown in Attachment 3), which will be the new head office of the Canadian Imperial Bank of Commerce ("CIBC"), with a PATH connection to Union Station over Bay Street and to the existing building at 1 The Esplanade over Yonge Street. The development qualifies to receive the City's Imagination, Manufacturing, Innovation and Technology (I.M.I.T) grant. The development agreements that include the I.M.I.T. grant and the Section 37 Agreement for this development require the Applicant, at its sole expense, to construct and maintain two above-grade publicly accessible pedestrian bridges. The Owner is required to obtain the permissions and/or licences necessary to facilitate the construction, maintenance and operation of the Bridges for the life of the development. Laughlin Solutions Incorporated submitted an application on behalf of 141 Bay Street Property I Inc. and Hines 141 Bay Property Inc. for the installation of two Bridges.

As the North Bay Pedestrian Bridge is required to connect and attach to Union Station, with a portion of the Bridge being located on City-owned lands, the Applicant was required to obtain authority for that portion of the connection. The authority granted in Item GL27.7, adopted by City Council at its meeting on December 15, 16 and 17, 2021, in respect of the portion of the bridge on City-owned lands, is conditional upon the Applicant securing the necessary approvals and entering into an agreement with the City to permit the construction and maintenance of the portion of the pedestrian bridge over Bay Street.

North Bay Pedestrian Bridge

The North Bay Pedestrian Bridge spans the Bay Street right-of-way adjacent to 141 Bay Street, linking the site to Union Station. The North Bay Pedestrian Bridge is proposed to be installed over the Bay Street right-of-way extending 40.5 metres from the east elevation of Union Station to the new CIBC square development at 141 Bay Street. The length of the Bridge over the Bay Street public right-of-way is approximately 24.34 metres, located approximately 61.10 metres south of Front Street, at 141 Bay Street.

This proposed PATH pedestrian Bridge will be fabricated with glass and aluminum, (with low visibility bird frit meeting TGS-3 Standards). It will have an exterior width of 6.22 metres and an exterior height of 7.25 metres, while the dimensions for the interior are 4.9 metres walkable width and 4.9 metres interior height.

The existing heritage façade on the north face of the Bay Street rail bridge (viaduct) forms the south wall of the new Bridge with a glass and steel envelope forming the other three sides. This will create a vitrine-like affect, allowing for the now-enclosed heritage wall to be showcased through the transparent glazing. This effect will be heightened at night with the interior illumination of the Bridge.

As the north face of the Bay Street rail bridge (viaduct) forms the south wall of the new Bridge, the owners will be entering into an agreement with Metrolinx. Prior to commencement of the City's encroachment agreement for the North Bay Pedestrian Bridge, the agreement between the owners and Metrolinx is to be made available to City staff to ensure the accurate preparation of the City's encroachment agreement.

The height of the North Bay Pedestrian Bridge is proposed to be 5.1 metres, and meets the requirements of the Canadian Highway Bridge Design Code (CAN/CSA-S6-06); which requires the structure to comply with the standards of the City, as the regulatory authority, or in their absence, with the requirements of the Transportation Association of Canada's Geometric Design Guide for Canadian Roads ("TAC"). As there is no City specific standards for the minimum vertical clearance of third party bridges over the public right-of-way, the TAC standards apply. TAC sets the minimum vertical clearance for a pedestrian bridge at 5.3 metres, or 0.3 metres above the clearance of any existing vehicular overpass structure situated along the same route. As there is an existing rail bridge at this location that is 4.1 metres above road grade, the proposed 5.1 metre vertical clearance is in compliance with the TAC standards. Additionally, Union Station is a heritage building and the height was determined appropriate for proper accessibility requirements.

A drawing of the proposed North Bay Pedestrian Bridge over Bay Street is included in Attachment 4.

Yonge Street Pedestrian Bridge

The Yonge Street Pedestrian Bridge is an enclosed corridor over Yonge Street, linking the site to the condominium building located at 1 The Esplanade. The Bridge spanning over Yonge Street extends 52.7 metres from the eastern podium of 141 Bay Street to the condominium complex located at 1 The Esplanade, known as the Backstage Condos. The length of the Yonge Street Pedestrian Bridge which will be situated above the right-of-way extends for a length of 24.37 metres and will be located 16.87 metres south of the south curb line of The Esplanade.

The Yonge Street Pedestrian Bridge will have an exterior width of 5.93 metres with an external height of 6.91 metres. The interior of the bridge will provide 5.74 metres of walkable clearance with a ceiling height of 4.00 metres.

Similar to the North Bay Pedestrian Bridge, the Yonge Street Pedestrian Bridge will be constructed of transparent glass including a ceramic bird frit meeting TGS-3 Standards, with a painted aluminum metal roof and soffit. The Bridge will be constructed with integrate exterior lighting in decorative "vaulted" soffit.

The new Bridge, which will be approximately 5.3 metres above the Yonge Street right-of-way will be constructed in accordance with the Canadian Highway Bridge Design Code (CAN/CSA-S6-06), and is to occupy the footprint of a portion of the existing rail viaduct. This portion of the rail viaduct will be demolished to accommodate the new Bridge. Within the remaining portion of the viaduct, a micro pile system will be installed. The micro pile system will provide a foundation for the portion of the viaduct which will continue to exist within the public right-of-way.

In addition, the Applicants are entering into an agreement with Metrolinx for permission to demolish the portion of the viaduct structure in order for the new Bridge to be installed. The executed Agreement between the Applicants and Metrolinx is required to be submitted to Transportation Services prior to any permit issuance for the installation of the Bridge and the installation of the micro pile system.

In keeping with the esthetics of the area, the Yonge Street Pedestrian Bridge will mirror certain design elements of the existing viaduct while creating an extension to the PATH system which will allow for pedestrian passage.

A drawing of the proposed Yonge Street Pedestrian Bridge over Yonge Street is included in Attachment 5.

Under Municipal Code Chapter 743, Streets and Sidewalks, Use Of, the General Manager of Transportation Services does not have authority to enter into encroachment agreements for the Bridges located within/over arterial roadways therefore, Community Council approval is required. An encroachment agreement between the City and the Owners will set out the Owner's responsibilities for the maintenance, repair and operation of the Bridges.

As there may be impacts to existing utility infrastructure, it will be the Applicant's responsibility to undergo a public utility review and obtain clearances from the affected utility agencies including satisfying their requirements prior to issuance of a construction permit authorizing work within the public right-of-way. The Applicant is also required to satisfy all conditions of approval set out in Attachments 1 and 2 and must comply with Transportation Services procedures for granting approval of bridges.

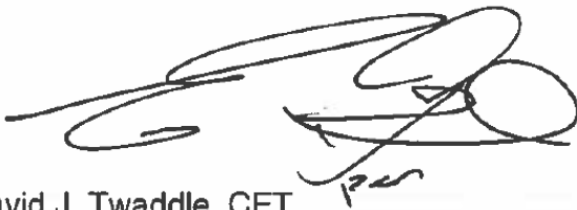
Transportation Services has reviewed the application and determined that the construction of the proposed Encroachments will not impact negatively on the public right-of-way. Staff recommend approval of the application, provided that: (i) the North Bay Pedestrian Bridge be conditional upon the Applicant entering into an agreement with the City to permit the construction and maintenance of the elevated pedestrian bridge within Union Station, and (ii) the Yonge Pedestrian Bridge be conditional upon the Applicant securing approval for the micro piling application, including without limitation, all approval(s) as may be required to demolish the existing Metrolinx rail viaduct.

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

CONTACT

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

SIGNATURE

A handwritten signature in black ink, appearing to read 'D. Twaddle', with a stylized flourish at the end.

David J. Twaddle, CET
Director, Permits and Enforcement, Transportation Services

ATTACHMENTS

Attachment 1: Major Terms and Conditions of the North Bay Pedestrian Bridge

Attachment 2: Major Terms and Conditions of the Yonge Street Pedestrian Bridge

Attachment 3: Artistic Rendering of Project at 141 Bay Street, including bridges (CIBC Plaza)

Attachment 4: Artistic Rendering of North Bay Pedestrian Bridge - 141 Bay Street

Attachment 5: Artistic Rendering of Proposed Yonge Street Pedestrian Bridge - 141 Bay Street

Attachment 6: Appendix A of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of

Attachment 1: Major Terms and Conditions of the North Bay Pedestrian Bridge

- a. The Applicant shall, at its own expense, design, construct, repair and maintain the Encroachment in a state of good repair, and to the satisfaction of the GM and the City's Chief Planner and Executive Director, 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, with the intention that the Bridge will be included as part of the City's PATH network;
- b. the design and construction, including without limitation, engineering details and other requirements relate to the Bridge, shall be approved through the Site Plan Approval process for the development at 141 Bay Street, Toronto (the "Development"). The Applicant shall comply with the Site Plan Approval requirements for the Bridge as well as the requirements set out in the Section 37 Agreement for the Development;
- c. construct the Encroachment with a minimum vertical clearance of 5.1 metres above the grade level roadway at Bay Street, in accordance with the minimum vertical clearance standards set out in the Transportation Association of Canada's Geometric Design Guide for Canadian Roads;
- d. the design and construction of the Bridge shall comply with the Canadian Highway Bridge Design Code (CAN/CSA-S6-06) as amended, superseded or replaced from time to time;
- e. the Applicant shall obtain all Public Utility Coordinating Committee clearances and/or sign-offs from the public utility companies and satisfy any requirements they may have;
- f. the Applicant shall submit a report, stamped and signed by either the architect or professional engineer who designed the Bridge, addressing how vehicles, pedestrians and City-owned infrastructure will be protected from any snow and/or ice or other materials that may fall from the Bridge;
- g. the Applicant shall obtain approval and all necessary permits for the construction of the Bridge from the Toronto Building Division, if required;
- h. prior to commencement of construction, a street work permit shall be obtained by the Applicant in accordance with Article III of Chapter 743, Streets and Sidewalks, Use Of, Toronto Municipal Code;
- i. the Applicant shall be responsible for obtaining TTC clearance for the use of loads/hoists on the roadway in order to install the bridge. This must be provided prior to the issuance of the construction permit;
- j. the Applicant shall submit and adhere to the accepted Traffic Management Plan, Construction Management Plan, Construction Schedule letter and Traffic Assessment Study outlining proposed Bridge construction/installation and shall 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;

k. the Applicant shall pay (i) an annual licence fee in the amount of \$8,500.88 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), as prescribed under Chapter 441, Fees and Charges, Appendix C – Schedule 2, Transportation Services, of the City's Municipal Code, as amended or replaced;

l. the Applicant agrees that the pedestrian Bridge shall remain publicly accessible throughout the term of the Agreement;

m. the City shall maintain the right to place or affix pipes, cables, wires, poles and other infrastructure within/to, over or under the Encroachment;

n. the City shall not be responsible for repairing or replacing the Encroachment damaged as a result of clearing or removing litter, graffiti, posters, snow or ice from the City's right-of-way, or as a result of street repairs, construction or other municipal activities on the public right-of-way;

o. 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 or arise from the permission granted, which release shall be in a form and content satisfactory to the City Solicitor;

p. the Applicant 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 Bridge, and any failure of the Applicant to comply with the Agreement, which indemnity shall be in a form and content satisfactory to the City Solicitor;

q. the Applicant 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 and Treasurer, 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 per occurrence or such greater amount as the Chief Financial Officer and Treasurer may require;

r. the Applicant shall provide and maintain an irrevocable letter of credit, in the amount of \$5 million to be retained by the City, for the duration of construction of the pedestrian Bridge over the Bay Street right-of-way, to secure against any damage to the City right-of-way and to guarantee construction of the Bridge 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 Applicant's obligations under the Agreement. Prior to the release of the letter of credit the Applicant will be required to provide a construction sign-off letter stamped and signed by the structural engineering firm that designed the Bridge which

states that Bridge is safe and ready to be opened to pedestrian traffic, along with two sets of as-built drawings;

s. the Applicant shall pay the City all costs related to the engineering review and inspections fees, if applicable;

t. the Applicant shall provide as-built drawings within 60 days of completing the construction of the Encroachment to Survey and Mapping at 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;

u. the Applicant shall submit a reference plan for the Bridge which includes the area of the Bridge in m2, upon completion of the Bridge;

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

w. the Applicant 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;

x. the term of the Agreement shall expire on the earlier of: (i) the removal or abandonment of the Bridge, if permitted under the Agreement, (ii) the date of the demolition of either of the buildings located at 141 Bay Street and/or Union Station (the "Buildings"), (iii) the termination of the Applicant's construction and licence agreement with the City for the portion of the bridge connecting to and through Union Station, (iv) if deemed necessary for municipal purposes as determined by the GM, acting reasonably, upon receiving not less than one hundred and eighty (180 days') notice in writing by the GM, or (v) in the event that the GM determines there is an emergency that presents a danger to public health or safety, upon such notice as the GM determines appropriate in the circumstances, if any;

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

z. the Applicant agrees that the City shall have the right of entry onto the lands and buildings located at 141 Bay Street and on the Encroachment, to acquire access to 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;

aa. 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 Applicant to

comply with the Agreement, and the costs incurred by the City in enforcing the Agreement shall be payable by the Applicant;

bb. the Applicant shall be required to adhere to applicable federal, provincial or municipal laws, by-laws, policies including the Toronto Municipal Code and Transportation Services' standard process for acquisition of encroachment agreements;

cc. the provisions of Appendix A of the Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of, attached as Attachment 6 to this report, shall be substantially incorporated into the Agreement to the satisfaction of the GM;

dd. the Applicant 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 180 days' notice in writing from the GM, or such other time as deemed reasonable by the GM;

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

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

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

hh. the Agreement shall be conditional upon the Applicant entering into a construction and licence agreement with the City, as owner of the Union Station lands, for the portion of the North Bay Pedestrian Bridge connecting to and located within Union Station (the "Construction and Licence Agreement"). The term of this Agreement shall be coterminous to the term of the Construction and Licence Agreement. This Agreement will automatically terminate if the Construction and Licence Agreement terminates.

Attachment 2: Major Terms and Conditions of the Yonge Street Pedestrian Bridge

- a. The Applicant shall, at its own expense, design, construct, repair and maintain the Encroachment in a state of good repair, and to the satisfaction of the GM and the City's Chief Planner and Executive Director, 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, with the intention that the Bridge will be included as part of the City's PATH network;
- b. the design and construction, including without limitation, engineering details and other requirements relate to the Bridge, shall be approved through the Site Plan Approval process for the development at 141 Bay Street, Toronto (the "Development"). The Applicant shall comply with the Site Plan Approval requirements for the Bridge as well as the requirements set out in the Section 37 Agreement for the Development;
- c. construct the Encroachment with a minimum vertical clearance of 5.3 metres above the grade level roadway at Yonge Street in accordance with the minimum vertical clearance standards set out in the Transportation Association of Canada's Geometric Design Guide for Canadian Roads;
- d. the design and construction of the Bridge shall comply with the Canadian Highway Bridge Design Code (CAN/CSA-S6-06) as amended, superseded or replaced from time to time;
- e. the Applicant shall obtain all Public Utility Coordinating Committee clearances and/or sign-offs from the public utility companies and satisfy any requirements they may have;
- f. the Applicant shall submit a report, stamped and signed by either the architect or professional engineer who designed the Bridge, addressing how vehicles, pedestrians and City-owned infrastructure will be protected from any snow and/or ice or other materials that may fall from the Bridge;
- g. the Applicant shall obtain approval and all necessary permits for the construction of the Bridge from the Toronto Building Division, if required;
- h. prior to commencement of construction, a street work permit shall be obtained by the Applicant in accordance with Article III of Chapter 743, Streets and Sidewalks, Use Of, Toronto Municipal Code;
- i. the Applicant shall be responsible for obtaining TTC clearance for the use of loads/hoists on the roadway in order to install the bridge. This must be provided prior to the issuance of the construction permit;
- j. the Applicant shall submit and adhere to the accepted Traffic Management Plan, Construction Management Plan, Construction Schedule letter and Traffic Assessment Study outlining proposed Bridge construction/installation and shall 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;

k. the Applicant shall pay (i) an annual licence fee in the amount of \$10,368.94 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), as prescribed under Chapter 441, Fees and Charges, Appendix C – Schedule 2, Transportation Services, of the City's Municipal Code, as amended or replaced;

l. the Applicant agrees that the pedestrian Bridge shall remain publicly accessible throughout the term of the Agreement;

m. the City shall maintain the right to place or affix pipes, cables, wires, poles and other infrastructure within/to, over or under the Encroachment;

n. the City shall not be responsible for repairing or replacing the Encroachment damaged as a result of clearing or removing litter, graffiti, posters, snow or ice from the City's right-of-way, or as a result of street repairs, construction or other municipal activities on the public right-of-way;

o. 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 or arise from the permission granted, which release shall be in a form and content satisfactory to the City Solicitor;

p. the Applicant 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 Bridge, and any failure of the Applicant to comply with the Agreement, which indemnity shall be in a form and content satisfactory to the City Solicitor;

q. the Applicant 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 and Treasurer, 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 per occurrence or such greater amount as the Chief Financial Officer and Treasurer may require;

r. the Applicant shall provide and maintain an irrevocable letter of credit, in the amount of \$4 million to be retained by the City, for the duration of construction of the pedestrian Bridge over the Bay Street right-of-way, to secure against any damage to the City right-of-way and to guarantee construction of the Bridge 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 Applicant's obligations under the Agreement. Prior to the release of the letter of credit the Applicant will be required to provide a construction sign-off letter

stamped and signed by the structural engineering firm that designed the Bridge which states that Bridge is safe and ready to be opened to pedestrian traffic, along with two sets of as-built drawings;

s. the Applicant shall pay the City all costs related to the engineering review and inspections fees, if applicable;

t. the Applicant shall provide as-built drawings within 60 days of completing the construction of the Encroachment to Survey and Mapping at 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;

u. the Applicant shall submit a reference plan for the Bridge which includes the area of the Bridge in m2, upon completion of the Bridge;

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

w. the Applicant 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;

x. the term of the Agreement shall expire on the earlier of: (i) the removal or abandonment of the Bridge, if permitted under the Agreement, (ii) the date of the demolition of either of the buildings located at 141 Bay Street and/or 1 The Esplanade (the "Buildings"), (iii) if deemed necessary for municipal purposes as determined by the GM, acting reasonably, upon receiving not less than one hundred and eighty (180 days') notice in writing by the GM, or (v) in the event that the GM determines there is an emergency that presents a danger to public health or safety, upon such notice as the GM determines appropriate in the circumstances, if any;

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

z. the Applicant agrees that the City shall have the right of entry onto the lands and buildings located at 141 Bay Street and on the Encroachment, to acquire access to 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;

aa. 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 Applicant to comply with the Agreement, and the costs incurred by the City in enforcing the Agreement shall be payable by the Applicant;

- bb. the Applicant shall be required to adhere to applicable federal, provincial or municipal laws, by-laws, policies including the Toronto Municipal Code and Transportation Services' standard process for acquisition of encroachment agreements;
- cc. the provisions of Appendix A of the Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of, attached as Attachment 6 to this report, shall be substantially incorporated into the Agreement to the satisfaction of the GM;
- dd. the Applicant 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 180 days' notice in writing from the GM, or such other time as deemed reasonable by the GM;
- ee. the Agreement to be registered on title to the Applicant's property, and other affected properties deemed necessary by the City Solicitor, at the expense of the Applicant, with appropriate title opinions provided to the satisfaction of the City Solicitor as may be required by the City Solicitor;
- ff. the Applicant shall pay all costs associated with preparing the Agreement and the registration of the Agreement on title;
- gg. the Applicant shall accept such additional terms and conditions as the GM or the City Solicitor may deem necessary in the interest of the City; and
- hh. the Agreement shall be conditional upon the Applicant entering into and complying with all requirements of the Micro Pile System Agreement, required to be issued in association with the proposed demolition of a portion of the existing Metrolinx viaduct and installation of micro piles to provide a foundation for the remaining portion of the viaduct within the public-right-way.

Attachment 3: Artistic Rendering of Project at 141 Bay Street, including bridges (CIBC Plaza)



Elevations - Overview

WilkinsonEyre

Attachment 4: Artistic Rendering of Proposed North Bay Pedestrian Bridge - 141 Bay Street



Attachment 5: Artistic Rendering of Proposed Yonge Street Pedestrian Bridge



Attachment 6: Appendix 'A' - Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of

TORONTO MUNICIPAL CODE CHAPTER 743, STREETS AND SIDEWALKS, USE OF

Appendix A

[Added 2012-03-07 by By-law 375-2012⁴³]

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.

⁴³Editor's Note: By-law 375-2012, enacted March 7, 2012 has received set fine approval and came into effect June 28, 2012. By-law 375-2012, as amended by By-law 668-2012, repealed a number of previous by-laws and policies. See Section 2 of By-law 375-2012 for a full list of the by-laws, policies and Municipal Code Chapters that were repealed.

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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

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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

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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.