

## **Encroachment Agreement – Pedestrian Tunnel at 481 University Avenue Linking to TTC's St. Patrick Station**

**Date:** June 20, 2022

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

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

**Wards:** Ward 11 - University-Rosedale

### **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 owners of 481 University Avenue, 481 Uni Investments Inc., has applied to the City for approval of their Development for a 52-storey mixed use building, containing 709 residential units, 20,782 square metres of office, and 3,605 square metres of retail space. As part of the Development process for this address, the owner has received the necessary Planning approvals for the development. The community benefits for the development obligates the owner to internalize the Toronto Transit Commission's (TTC) existing external stairway entrance at the northeast corner of Dundas Street West and University Avenue, creating an underground pedestrian access tunnel connecting the building at their development to TTC's St. Patrick Subway Station.

The purpose of this report is to seek Community Council authorization to enter into an encroachment agreement with the owner to permit the portion of the tunnel to be constructed under the sidewalk grade at 481 University Avenue and connecting to the existing TTC pedestrian tunnel which leads to St. Patrick Subway Station.

### **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 owner of 481 University Avenue (the "Owner") for the purpose of permitting the Owner to construct, maintain, repair and operate a publicly accessible underground pedestrian tunnel located approximately 9.3 metres north of Dundas Street West, connecting 481 University Avenue to the existing

TTC pedestrian tunnel connected to St. Patrick Subway Station (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 obtain approval and all necessary permits for the construction of the Encroachment from the Toronto Building Division, if required;
- e. 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;
- f. 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 re-construction/installation and advise on the impacts within the public right-of-way in the area of the proposal Encroachment, which content shall be to the satisfaction of the GM, prior to the issuance of a Construction Permit;
- g. the Owner shall provide reasonable notification to the TTC prior to commencing work on the Tunnel, and shall work collaboratively with the TTC to complete the physical linkage of the Tunnel to the TTC pedestrian tunnel;
- h. the Owner shall enter into an Entrance Connection Easement Agreement (the "ECEA") with the City of Toronto to allow continued pedestrian access through the Encroachment into the Owner's Building at 481 University Avenue; This document must be executed prior to the issuance of a construction permit.
- i. the Owner shall adhere to all requirements laid out within a Construction Agreement entered into between the Owner and the TTC with respect to tunnel construction relating to their infrastructure;

- j. the Owner shall pay (i) an annual licence fee in the amount of \$693.73 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 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 or such greater amount as the Chief Financial Officer and Treasurer may require;
- q. the Owner shall provide and maintain an irrevocable letter of credit, in an amount of \$766,800.00 to be retained by the City, for the duration of construction of the pedestrian Tunnel within the University Avenue right-of-way, to secure against any damage to the City right-of-way and to guarantee 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. 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 provide as-built drawings within 60 days of completing the construction of the Encroachment to Survey and Mapping, Attention: Utility Mapping Supervisor, at [engsvy@toronto.ca](mailto:engsvy@toronto.ca), 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;
- s. the Owner shall submit a reference plan for the Tunnel which includes the area of the Tunnel in m2, upon completion of the Tunnel;
- t. 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;
- u. 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;
- v. the term of the Agreement shall expire on the earlier of: (i) the removal or abandonment of the Tunnel, (ii) the date of demolition of the building located at 481 University Avenue (the "Building"), where such Building(s) is or are not being re-constructed; (iii) the closure of the TTC pedestrian tunnel leading to St. Patrick's Station; (iv) 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 (v) 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 determinates appropriate in the circumstances, if any;
- w. 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;
- x. the Owner agrees that the City shall have the right of entry onto the lands and building located 481 University Avenue 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;
- y. 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;
- z. 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;

aa. the provisions of Appendix A of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of, attached as Attachment 3 to this report, shall be substantially incorporated into the Agreement to the satisfaction of the GM;

bb. 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;

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

dd. 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;

ee. 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 for the Owner;

ff. as 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;

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

hh. the Owners shall have the tunnel inspected on a regular schedule as deemed necessary by the CHBDC;

ii. the Owners must make a payment in the amount of \$43,324.20 for the cost of the Engineering Inspection and Review Fee; and

jj. 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.

2. Toronto and East York Community Council direct the GM to extend the Agreement to the new owner of 481 University Avenue, in the event of sale or transfer of the property at 481 University Avenue, subject to the prior approval of the GM, and provided in all Encroachment Agreement - Pedestrian Tunnel at 481 University Avenue

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 Solicitor.

## **FINANCIAL IMPACT**

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The Owner will be responsible for the entire costs for the re-construction of the Tunnel, as well as its maintenance, repair and operation.

The Owner shall pay an annual licence fee of \$693.73, 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.

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

## **DECISION HISTORY**

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At its meeting on August 25, 26, 27 and 28, 2014, City Council approved an application to amend the Zoning By-law to permit a 55-storey mixed use building at the addresses known municipally as 481 University Avenue, 210 Dundas Street West, 70 Centre Avenue and 137 Edward Street. The community benefits for this project, secured through an Agreement pursuant to Section 37 of the Planning Act, include internalizing the TTC staircase at the northeast corner of University Avenue and Dundas Street West.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.TE34.29>

## **COMMENTS**

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An application has been received from Uni 481 University Avenue Inc., to construct a portion of a tunnel underneath the sidewalk at 481 University Avenue connecting to an existing TTC pedestrian tunnel leading to St. Patrick's TTC Subway Station.

In accordance with the Section 37 Agreement for the development at this address, the owner is required to internalize the TTC staircase at the northeast corner of University Avenue, which is the subject of this report.

The proposed tunnel extension leading from the property line at 481 University Avenue to connect to the existing St. Patrick's TTC Station tunnel is to be located 19.13 m north of Dundas Street West. This underground tunnel will include six access doors - three on either side of each opening. The tunnel wall opening at the entrance to the St. Patrick's Station Tunnel is approximately 4.7 metres in width.

Prior to the construction of the tunnel extension a large City Sewer will need to be replaced. The sewer replacement construction is currently under review by Engineering & Construction Services. It will be necessary for the owners to enter into a Municipal

Infrastructure Agreement for the work of installing a new sewer which is to be located under the proposed tunnel connection.

The owners have provided double stamped Engineering Drawings for this project as it is a requirement of the review undertaken by Transportation Services.

The Tunnel will connect the TTC pedestrian tunnel to 481 University Avenue, and will allow pedestrian access to the TTC network, through the new entrance and exit to St. Patrick's TTC Subway Station secured by the ECEA. This agreement must be completely executed prior to the permit being issued by Transportation Services to commence work on the tunnel extension.

The Owners are also entering into an agreement with TTC for the connection of the tunnel to the existing TTC tunnel. This agreement must also be fully executed prior to Transportation Services issuing a permit to commence work on the tunnel extension.

The portion of the tunnel in the City's right-of-way will be reconstructed to meet AODA requirements.

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.

An encroachment agreement between the City and the Owner is required in order to permit the construction of the 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 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 the proposed tunnel connection underneath the sidewalk at 481 University Avenue 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.

## **CONTACT**

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Elio Capizzano, Manager, Permits and Enforcement - Transportation Services, 416-392-7878, [Elio.Capizzano@toronto.ca](mailto:Elio.Capizzano@toronto.ca)

## **SIGNATURE**

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## **ATTACHMENTS**

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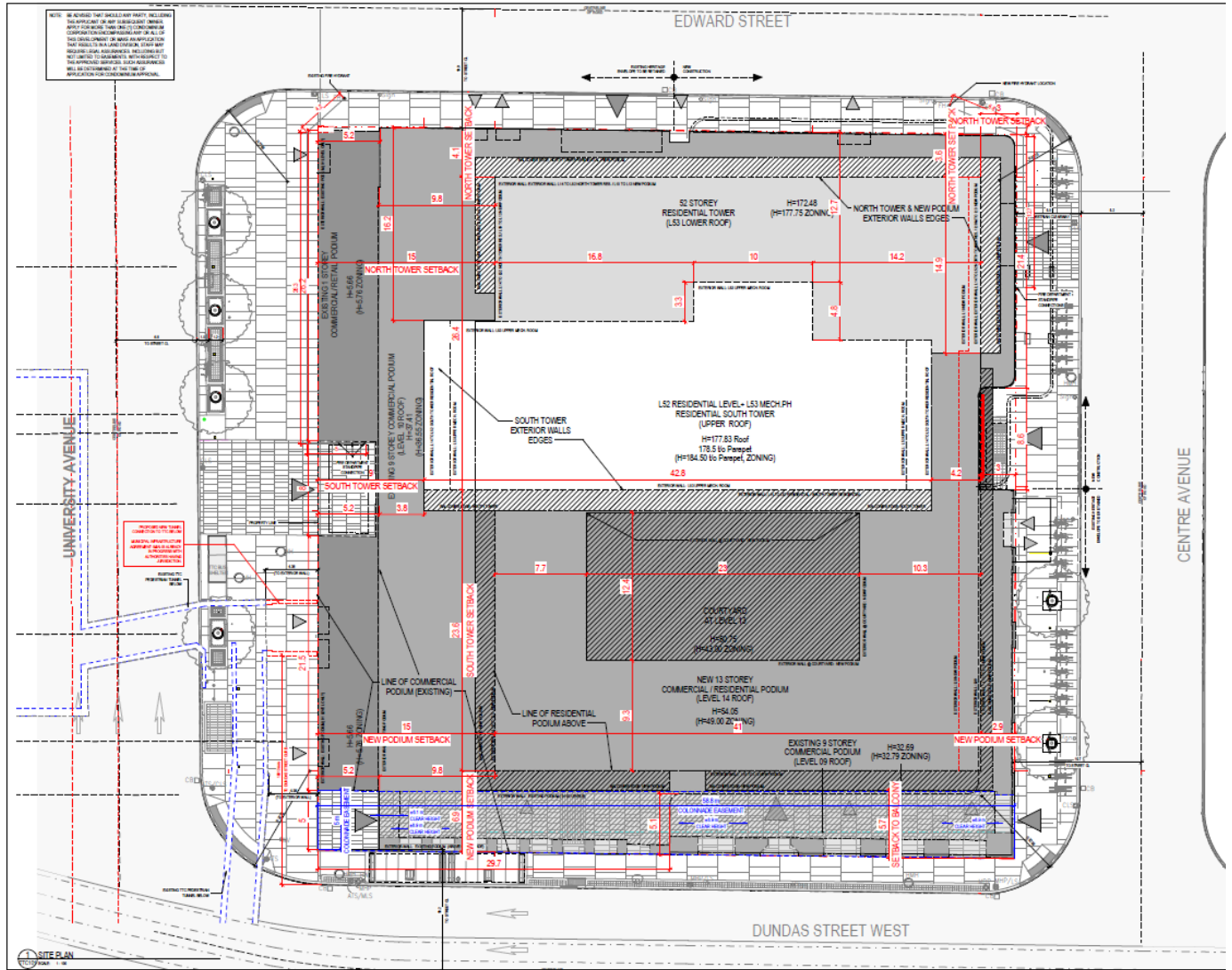
Attachment 1 – Site Plan Drawing

Attachment 2 – Cross Section Drawing

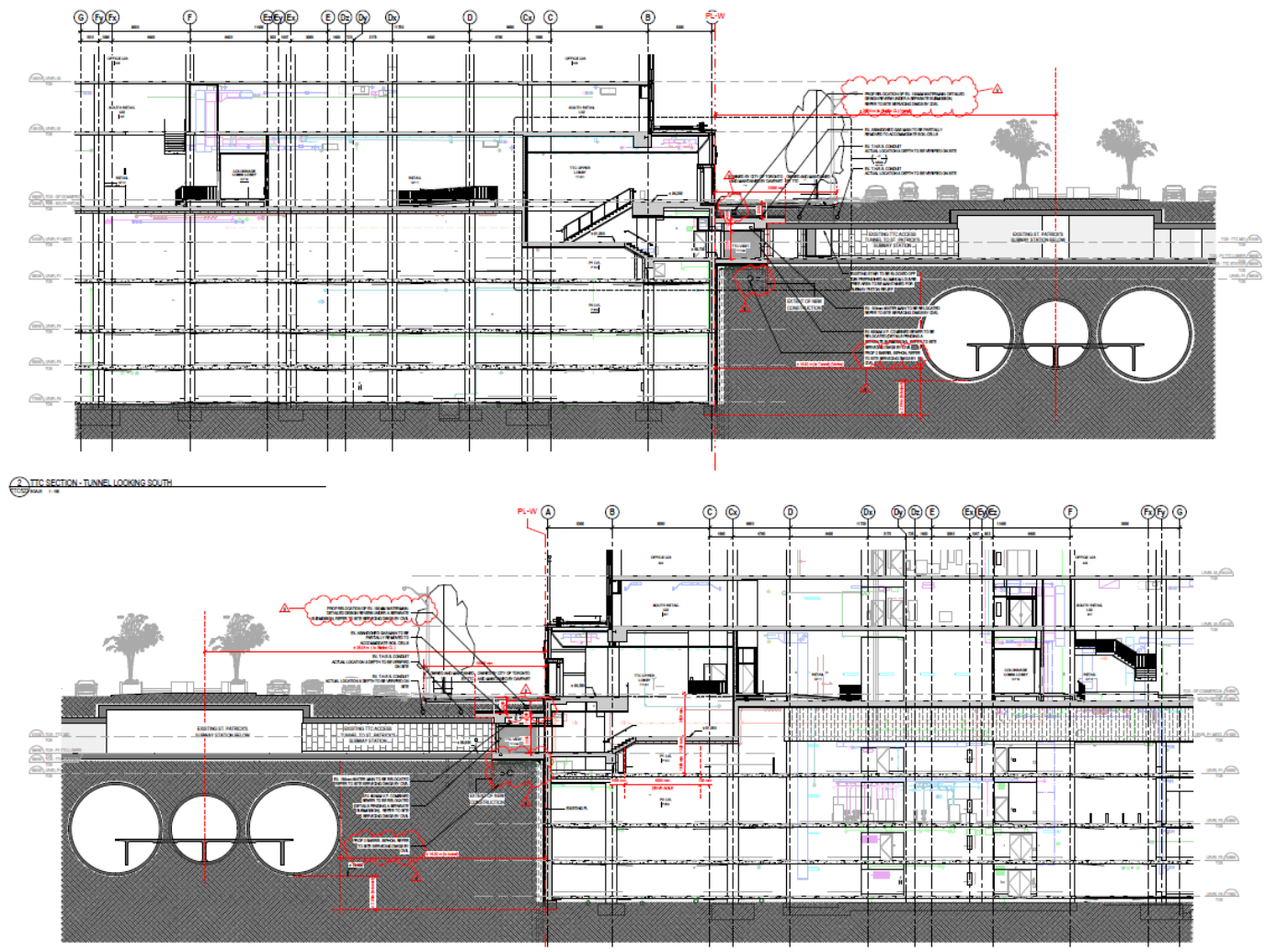
Attachment 3 – Appendix A of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of



# Attachment 1 – Site Plan Drawing - 481 University Avenue indicating location of tunnel



Attachment 2 – Cross Section Drawing – 481 University Avenue – showing tunnel



Attachment 3 - Appendix A of 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 375-2012<sup>43</sup>]**

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.

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<sup>43</sup>Editor'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.



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

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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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.