

Encroachment Agreements: Pedestrian Tunnel and Vehicular Tunnel under a Future Public Highway, to be named Downes Street, connecting 100 Queens Quay East to 55 Lake Shore Boulevard East

Date: February 6, 2023

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 Menkes 55 Lakeshore Inc., the registered owner at 100 Queens Quay East (Block 1) and 55 Lake Shore Boulevard East (Block 2) for the operation and maintenance of: (i) a public pedestrian PATH tunnel, and (ii) a private vehicular loading tunnel, which will encroach under the new public highway to be named Downes Street once it becomes dedicated to the City upon registration of the Phase 1 Plan of Subdivision.

The site is proposed to be redeveloped and will consist of four development blocks bound by Lake Shore Boulevard East to the north, a new street to the east, Queens Quay East to the south, and Freeland Street to the west, intersected by the Harbour Street extension (to be renamed Downes Street, upon registration of the Phase I Plan of Subdivision). As part of the development, the owner of 100 Queens Quay East constructed the two tunnels connecting Block 1 and Block 2.

The purpose of this report is to seek authority to enter into two encroachment agreements with the owner of 100 Queens Quay East to permit the operation and maintenance of the public pedestrian PATH tunnel and the private vehicular tunnel under Downes Street once conveyed to the City.

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 owner of 100 Queens Quay East (the "Applicant") to permit the Applicant to maintain, repair and operate: (i) a publicly accessible pedestrian PATH tunnel (the "Pedestrian Tunnel") and (ii) a private vehicular loading tunnel (the "Vehicular Tunnel") (also referred to individually as a "Tunnel" or "Encroachment", or collectively, as the "Tunnels" or "Encroachments"), connecting the building at 100 Queens Quay East (Block 1) to the building at 55 Lake Shore Boulevard East (Block 2), that will encroach under Downes Street, the future public highway, 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 100 Queens Quay East, in the event of sale or transfer of the property at 100 Queens Quay East, 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 a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

The Agreement for the Pedestrian Tunnel will generate annual revenue as prescribed under Chapter 441, Fees and Charges, Appendix C – Schedule 2, Transportation Services, of the City's Municipal Code, as amended or replaced, for public tunnels and shall increase annually in accordance with the City's User Fee Policy, as provided in the Toronto Municipal Code, Chapter 441 Fees and Charges.

The Agreement for the Vehicular Tunnel will generate an annual revenue in an amount of \$83,250.00 per annum, and shall increase annually based on the Consumer Price Index and shall be re-calculated every 5 years throughout the term of the Agreement, 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.

The Applicant will be responsible for all associated costs of maintaining, operating and repairing both the Pedestrian Tunnel and the Vehicular Tunnel.

DECISION HISTORY

At its meeting on February 2, 3 and 5, 2021, City Council adopted Item TE22.4 "53, 55 and 95 Lake Shore Boulevard East, 15, 33 and 43 Freeland Street and 2 and 15 Cooper Street - Subdivision Application - Final Report", whereby in accordance with the delegated approval under By-law 229-2000, as amended, City Council was advised that the Chief Planner and Executive Director, City Planning intends to approved the Draft Plan of Subdivision, subject to the conditions generally listed in Attachment 12 thereof, including the construction of two new tunnels under Downes Street.

Agenda Item History - 2021.TE22.4 (toronto.ca)

COMMENTS

An application was made by Menkes 55 Lake Shore Inc. for Draft Plan of Subdivision City file no. 16 152754 STE 28 SB, to create four blocks which would include a mixed-use development, including a new office/retail building (Block 1), five mixed-use buildings (Blocks 2 and 4) and a public park (Block 3). See Attachment 3, 4 and 5 for sketches of the Development and approximate location of the Tunnels.

Item TE22.4 was adopted by City Council at its meeting on February 2, 3 and 5, 2021, whereby in accordance with the delegated approval under By-law 229-2000, as amended, City Council was advised that the Chief Planner and Executive Director, City Planning intends to approved the Draft Plan of Subdivision for this development, subject to, amongst other matters, the Applicant constructing the Pedestrian Tunnel and the Vehicular Tunnel, at its sole cost, and entering into encroachment agreements with the City to permit the encroachment of the Tunnels under the future public highway to be named Downes Street.

As a condition of approval of the Draft Plan of Subdivision, the Applicant is required to enter into encroachment agreements with the City of Toronto, for the Pedestrian Tunnel, and the Vehicular Tunnel. Both the Pedestrian Tunnel and the Vehicular Tunnel are located under the surface of the proposed future City public highway (Downes Street) connecting the buildings at 100 Queens Quay East (Block 1) and 55 Lake Shore Blvd East (Block 2). Upon registration of the Phase 1 of the Plan of Subdivision, title to the segment of Downes Street, East of Cooper Street will vest in the City and be subject to the terms of a subdivision agreement which is to be entered into as a condition of plan of subdivision registration.

The encroachment agreements will permit Menkes 55 Lakeshore Inc. to operate and maintain the underground PATH connection and underground loading connection under the new public highway to be named Downes Street.

Menkes 55 Lakeshore Inc. advises that the Pedestrian Tunnel and the Vehicular Tunnel have been constructed in accordance with the approved Building Permit drawings pursuant to the Block 1 Building Permit number 17 255605 BLD NB and SPA application number 16 270590 STE 28 SA. They also have submitted a letter with 100 Queens Quay East and 55 Lake Shore Boulevard East-Tunnel Encroachment Agreements

double engineer stamps, from Stephenson Engineering which states that the structures of the tunnels shown on S2-01, S2-03 to S2-05, S3-01, S3-07, S3-09 and S6-08 have been designed in accordance with the requirement of the Canadian Highway Bridge Design Code. The Applicant shall be required to satisfy Transportation Services that the Tunnels have been constructed in accordance with all City requirements including the requirements set out in Attachment 1 and 2.

Pedestrian PATH Tunnel

The Pedestrian Tunnel is located at the P1 level of the buildings between 100 Queens Quay East (Block 1) to 55 Lake Shore Boulevard East (Block 2) and commences 14.27m from the west side corner at Cooper Street. The width of the future highway is approximately 27m and the Pedestrian Tunnel stretches the complete width of the new public highway on a light diagonal from the property line at 100 Queens Quay East, to the property line at 55 Lake Shore Boulevard East. The tunnel is 2.4m in height, and is approximately 6.48m in width, located 1.82m beneath the surface of the road, which will be conveyed to the City and named Downes Street, once the Draft Plan of Subdivision is registered. The total area of the underground Pedestrian Tunnel is 257.5m². The Pedestrian Tunnel will be accessible to the public and form part of the City's PATH network.

Vehicular Loading Tunnel

The Vehicular Tunnel is located at the P1 and P2 level, also between the buildings at 100 Queens Quay East (Block 1) and 55 Lake Shore Boulevard East (Block 2) and is situated adjacent the Pedestrian Tunnel approximately 20.75m from the west side curb on Cooper Street. It also stretches on a light diagonal in between the buildings for the complete width of the new public highway. The Vehicular Tunnel has a minimum vertical clearance of 4.4m in height within, and a minimum depth of 1.78m from the surface of the street. It is a minimum of 9.0 m in width, which includes a rapid speed overhead door. The Vehicular Tunnel will be accessed on the east side of the new development at 55 Lake Shore Boulevard East (Block 2). The area of the Vehicular Tunnel is 315.6m². The Vehicular Tunnel provides necessary connections for the functional operations of the buildings at 100 Queens Quay East (Block 1) and 55 Lake Shore Blvd East (Block 2). The Vehicular Tunnel will be a private loading connection and is required as the loading access for the development has been consolidated on Block 2.

The operation and maintenance of the Encroachments cannot be considered under the criteria set out in Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of. As such Transportation Services is required to report on this application to Community Council for the authority to enter into the encroachment Agreements between the City and the Applicant in order to permit the maintenance of the two tunnels within the proposed future highway, as well as to set out the Applicant's responsibilities for the maintenance, repairs and its operation.

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 tunnels.

Transportation Services has reviewed the application and determined that the maintenance of the Pedestrian Tunnel and Vehicular Tunnel will not impact negatively on the future public highway. Staff recommend approval of the application, provided that all requirements of the Draft Plan of Subdivision are met, and once the proposed future highway to be known as Downes Street, has been dedicated to the City.

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

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

ATTACHMENTS

- Attachment 1: Major Terms and Conditions of the Pedestrian Tunnel
- Attachment 2: Major Terms and Conditions of the Vehicular Tunnel
- Attachment 3: Site Plan of 100 Queens Quay East (Block 1) and 55 Lake Shore Blvd (Block 2) - Tunnels shown between the two Buildings
- Attachment 4: Sketch of Development Site
- Attachment 5: Sketch of Approximate Location of Tunnels
- Attachment 6: Appendix A of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of

Attachment 1: Major Terms and Conditions of the Pedestrian Tunnel

- a. The Applicant shall, at its own expense, maintain, operate and repair 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 Tunnel will be included as part of the City's PATH network;
- b. the design and construction of the Tunnel shall comply with the Canadian Highway Bridge Design Code (CAN/CSA-S6-06) as amended, superseded or replaced from time to time, including without limitation for highway loading purposes, including allowance for impact factors;
- c. the Applicant shall provide evidence satisfactory to the GM that it has obtained all Public Utility Coordinating Committee clearances and/or sign-offs from the public utility companies and satisfy any requirements they may have;
- d. the Applicant shall provide evidence satisfactory to the GM that it has obtained approval and all necessary permits for the construction of the Tunnel from the Toronto Building Division and comply with all requirements to register the Plan of Subdivision;
- e. upon compliance with any requirements as may be noted within the Agreement, 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, for the maintenance of the Tunnel;
- f. the Applicant shall pay (i) an annual licence fee in the amount as prescribed under Chapter 441, Fees and Charges, Appendix C – Schedule 2, Transportation Services, of the City's Municipal Code, as amended or replaced, and (ii) any applicable real property taxes eligible. The licence fee shall increase annually throughout the term of the Agreement in accordance with the City's User Fee Policy, as provided for under Chapter 441, Fees and Charges, of the Toronto Municipal Code;
- g. the Applicant agrees that the Pedestrian Tunnel shall remain publicly accessible throughout the term of the Agreement;
- h. the City shall maintain the right to place or affix pipes, cables, wires, poles and other infrastructure within/to, over or under the Encroachment;
- i. 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 or within the public highway;
- j. 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;

k. 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 Tunnel, 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;

l. 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 City of Toronto, including a cross-liability /severability of interest clause, a provision that the insurance is primary, endorse the City of Toronto as an additional insured, a 30 day prior notice of cancellation clause, and in the amount not less than \$15 million per occurrence or such greater amount as the Chief Financial Officer and Treasurer may require;

m. the Applicant shall provide and maintain an irrevocable letter of credit, if applicable, in an amount satisfactory to the GM, to be retained by the City, for the Pedestrian Tunnel constructed under the future Downes Street public highway, to secure against any damage to the City's public highway and that the work within the public highway is completed and maintained to the City's satisfaction, including the restoration of the public highway, if necessary, to the satisfaction of the GM for a period of two (2) years after the commencement date of the Agreement; 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;

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

o. 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;

p. the Applicant shall submit a reference plan for the Tunnel which includes the area of the Tunnel in square meters (m²), upon completion of the Tunnel;

q. 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;

r. 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;

s. the terms 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 the demolition of either of the buildings located at 100 Queens Quay East and/or 55 Lake Shore Boulevard East (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 (iv) in the event that 100 Queens Quay East and 55 Lake Shore Boulevard East-Tunnel Encroachment Agreements

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;

t. 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, obtaining all necessary approvals from the City prior to any commencement of work;

u. the Applicant agrees that the City shall have the right of entry onto the lands and buildings located at 100 Queens Quay East and 55 Lake Shore Boulevard East, 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;

v. 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;

w. 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;

x. 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;

y. 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;

z. 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;

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

bb. 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

cc. The Agreement shall be conditional upon Downes Street being conveyed to the City and dedicated as a public highway, at no cost to the City, and the Agreement will

come into full force and effect upon the conveyance of Downes Street to the City as public highway.

Attachment 2: Major Terms and Conditions of the Vehicular Tunnel

- a. The Applicant shall, at its own expense, maintain, operate and repair 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;
- b. the design and construction of the Vehicular Tunnel shall comply with the Canadian Highway Bridge Design Code (CAN/CSA-S6-06) as amended, superseded or replaced from time to time, including without limitation for highway loading purposes, including allowance for impact factors;
- c. the Applicant shall provide evidence satisfactory to the GM that it has obtained all Public Utility Coordinating Committee clearances and/or sign-offs from the public utility companies and satisfy any requirements they may have;
- d. the Applicant shall provide evidence satisfactory to the GM that it has obtained approval and all necessary permits for the construction of the Tunnel from the Toronto Building Division, and comply with all requirements to register the Plan of Subdivision;
- e. upon compliance with any requirements as may be noted within the Agreement, 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, for the maintenance of the Tunnel;
- h. the Applicant shall pay (i) an annual licence fee in the amount of \$83,250.00 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 five (5) 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;
- i. the City shall maintain the right to place or affix pipes, cables, wires, poles and other infrastructure within/to, over or under the Encroachment;
- j. 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 highway;
- k. 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;
- l. 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 vehicular Tunnel, 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;

m. 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 City of Toronto, including a cross-liability /severability of interest clause, a provision that the insurance is primary, endorses the City of Toronto as an additional insured, a 30 day prior notice of cancellation clause, and in the amount not less than \$15 million per occurrence or such greater amount as the Chief Financial Officer and Treasurer may require;

n. the Applicant shall provide and maintain an irrevocable letter of credit, if applicable, in an amount satisfactory to the GM, to be retained by the City, for the Vehicular Tunnel constructed under the future Downes Street public highway, to secure against any damage to the City's public highway and that the work within the public highway is completed and maintained to the City's satisfaction, including the restoration of the public highway, if necessary, to the satisfaction of the GM for a period of two (2) years after the commencement date of the Agreement; 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.

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

p. 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;

q. the Applicant shall submit a reference plan for the vehicular Tunnel which includes the area of the vehicular Tunnel in square meters (m²) upon completion of the Tunnel;

r. 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;

s. 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;

t. the term of the Agreement shall expire on the earlier of: (i) the removal or abandonment of the vehicular Tunnel, if permitted under the Agreement, (ii) the date of the demolition of either of the buildings located at 100 Queens Quay East and/or 55 Lake Shore Boulevard East (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 determinates appropriate in the circumstances, if any;

u. 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, obtaining all necessary approvals from the City prior to any commencement of work;

v. the Applicant agrees that the City shall have the right of entry onto the lands and buildings located at 100 Queens Quay East and 55 Lake Shore Boulevard East, 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;

w. 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;

x. 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;

y. 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;

z. 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;

aa. 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;

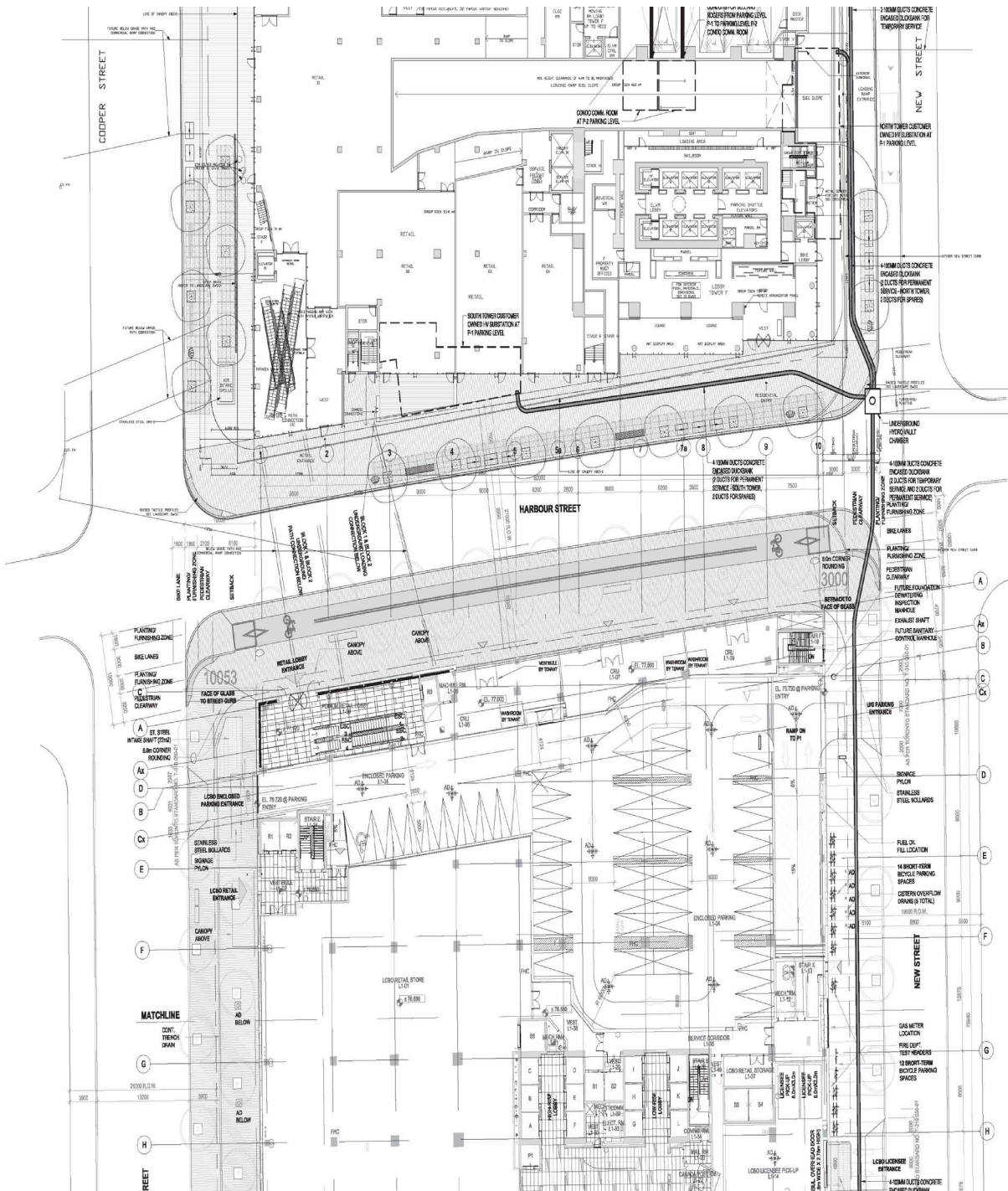
bb. the Applicant shall pay all costs associated with preparing the Agreement and the registration of the Agreement on title;

cc. 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

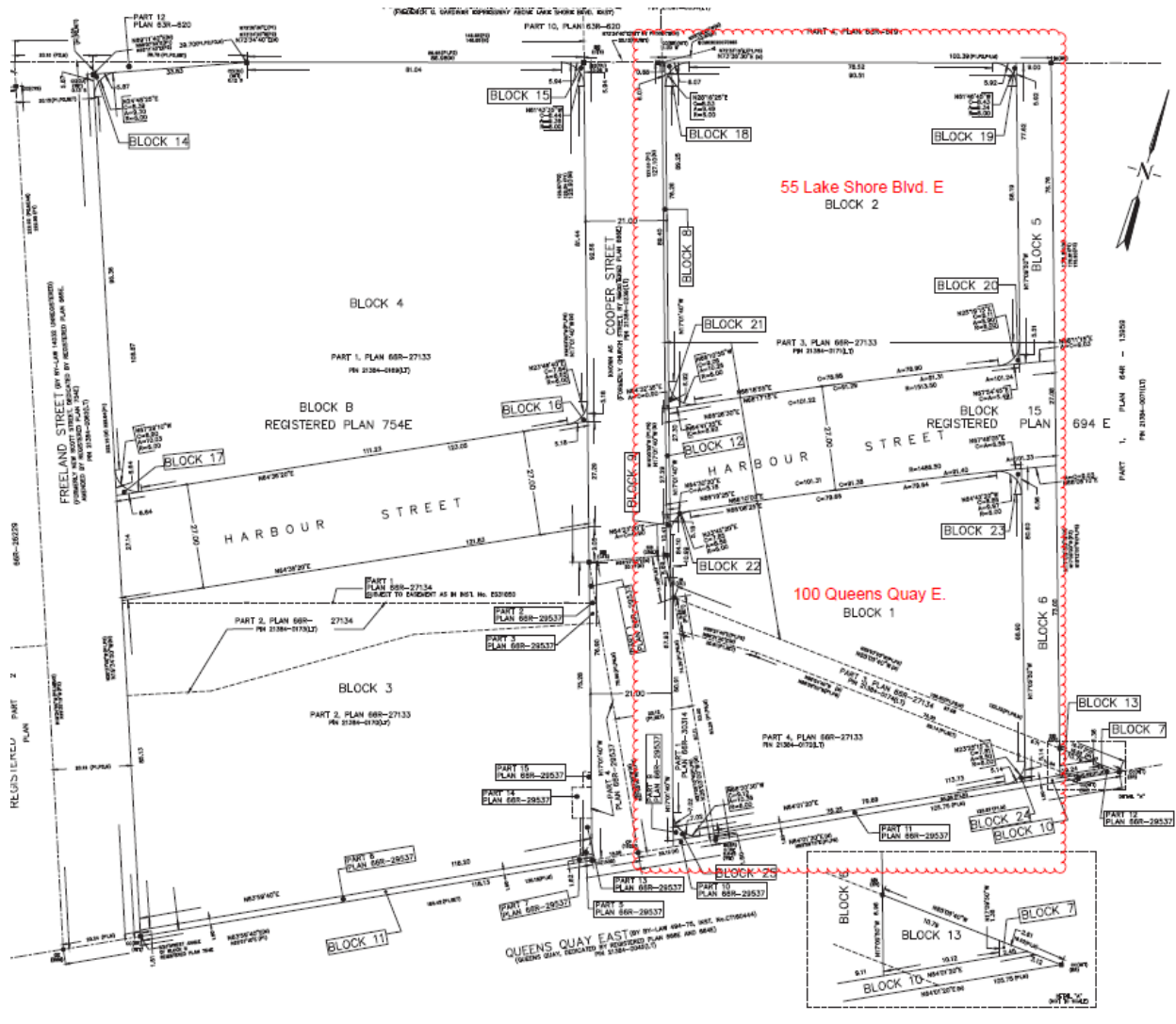
dd. The Agreement shall be conditional upon Downes Street being conveyed to the City and dedicated as a public highway, at no costs to the City, and the Agreement will

come into full force and effect upon the conveyance of Downes Street as public highway.

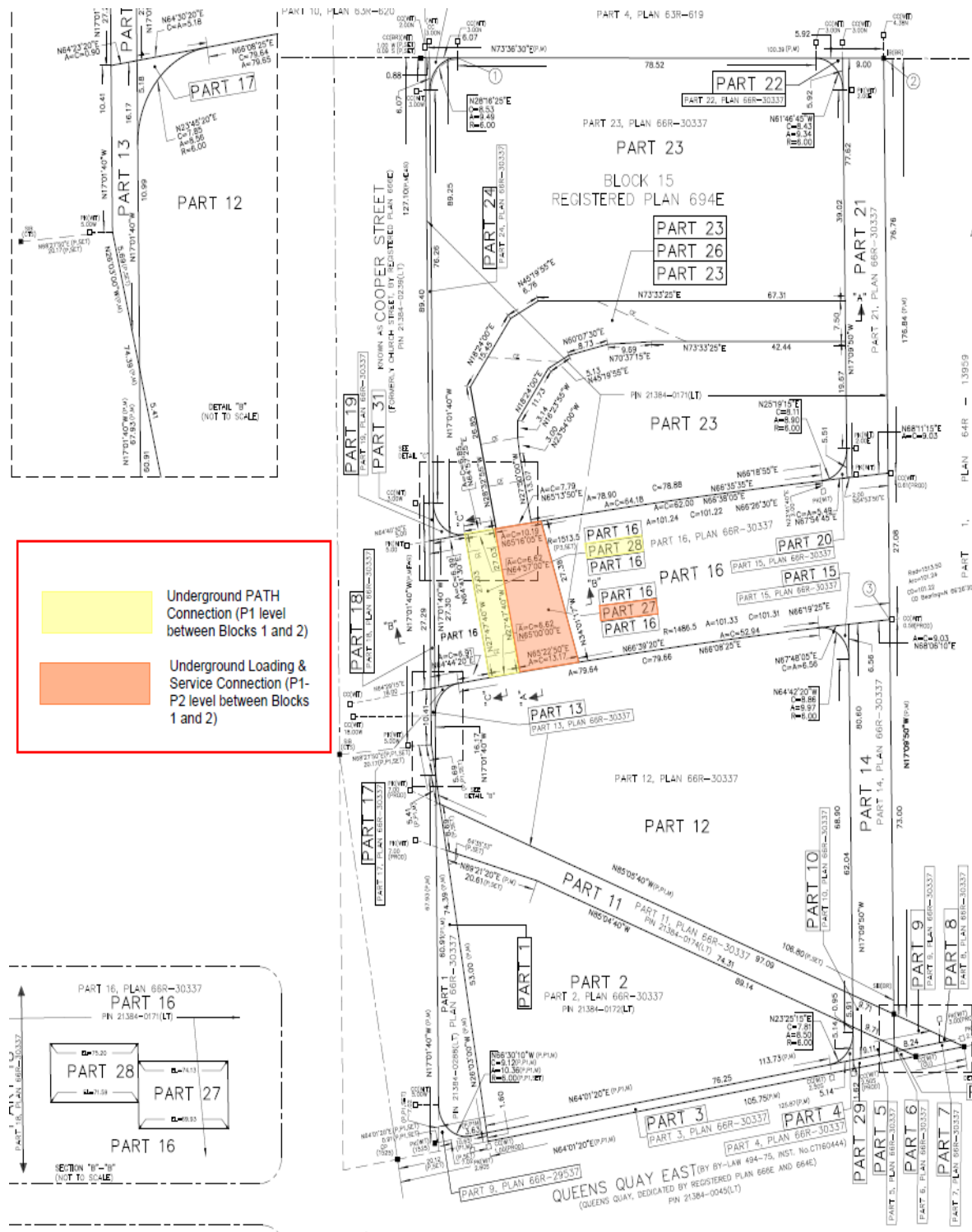
Attachment 3: Site Plan of 100 Queens Quay East (Block 1) and 55 Lake Shore Blvd (Block 2) - Tunnels shown between the two Buildings



Attachment 4: Sketch of Development Site



Attachment 5: Sketch of Approximate Location of the Tunnels



Attachment 6: 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.