

## **Encroachment Agreement – 1141 Bloor Street West - Pedestrian Tunnel**

**Date:** December 18, 2024

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

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

**Wards:** Ward 9 – Davenport

### **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.

Fitzrovia Real Estate Inc. has submitted an application on behalf of the registered owners of the property municipally known as 1141 Bloor Street West to construct a subsurface pedestrian tunnel across Bloor Street West which lies between the owners' new development at the Property and Toronto Transit Commission's Dufferin Subway Station. The tunnel will be accessible to the public during the operating hours of Toronto Transit Commission's Subway System.

The purpose of this report is to seek Community Council authorization to enter into an encroachment agreement with the owners of 1141 Bloor Street West and 980 Dufferin St. to permit the construction of the tunnel under the public highway known as Bloor Street West.

### **RECOMMENDATIONS**

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

1. Toronto and East York Community Council authorize the City to enter into an encroachment agreement (the "Agreement") with the owners of 1141 Bloor Street West and 980 Dufferin Street (collectively, the "Owner") to permit the Owner to construct, maintain, repair and operate a publicly accessible underground pedestrian tunnel, as shown in Attachments 1 and 2 (the "Tunnel"), to be located west of Dufferin Street across Bloor Street West, connecting the Owner's lands, located at 1141 Bloor Street West and 980 Dufferin St. (the "Owner's Lands"), and Toronto Transit Commission's Dufferin Subway Station, substantially on the major terms and conditions set out in Attachment 3, and including such other terms and conditions or such amendments to

the major terms and conditions set out in Attachment 3 as deemed appropriate by 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 1141 Bloor Street West, in the event of a sale or transfer of the property at 1141 Bloor Street West, subject to the prior approval of the GM, and provided in all cases the transferee or assignee enters into an assumption agreement with the City to assume the obligations under the Agreement, as well as the obligations under the construction and licence agreement for the portion of the Tunnel on City-owned lands, in form satisfactory to the City.

## **FINANCIAL IMPACT**

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The Owner will be responsible for all associated costs for the construction, maintenance, repair and operation of the Tunnel.

The Owner shall pay an annual licence fee of \$5,097.60, 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 ten (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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City Council, at its meeting on June 14 and 15, 2023, adopted item TE5.36 entitled "Traffic Control Signals - Dufferin Street and Croatia Street" which authorized the installation of traffic control signals at the intersection of Dufferin Street and Croatia Street.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE5.36>

City Council, at its meeting on May 10, 11 and 12, 2023, adopted item TE4.56 entitled "Traffic Control Signals - Bloor Street West and Pauline Avenue/Collegiate Road" which authorized the installation of traffic control signals at the intersection of Bloor Street West and Pauline Avenue/Collegiate Road.

<https://secure.toronto.ca/council/agenda-item.do?item=2023.TE4.56>

City Council, at its meeting on July 19, 20, 21 and 22, 2022, adopted item MM47.88 entitled "1141 Bloor Street West, 980 Dufferin Street and 90 Croatia Street" which declared, pursuant to subsection 45(1.4) of the Planning Act, R.S.O. 1990, c. P.13 for the purposes of subsection 45(1.3) of the Planning Act, R.S.O. 1990, c. P.13, that Fitzrovia Real Estate and Hazelview Investments (the owners) be permitted to apply for variances to Site Specific Zoning By-law 700-2021 (Ontario Land Tribunal) in respect of the lands municipally known as 1141 Bloor Street West, 980 Dufferin Street and, 90

Croatia Street before the second anniversary of the first day on which Site Specific Zoning By-law 700-2021 (Ontario Land Tribunal) came into effect.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.MM47.88>

City Council, at its meeting on July 14, 15 and 16, 2021, adopted item CC35.21 entitled "900 Dufferin Street - Official Plan Amendment and Zoning By-law Amendment Application - Request for Directions" which adopted and authorized the public release of confidential instructions to staff in Confidential Attachment.

<https://secure.toronto.ca/council/agenda-item.do?item=2021.CC35.21>

City Council, at its meeting on September 30, October 1 and 2, 2020, adopted item MM24.10 entitled "1141 Bloor Street West, 980 Dufferin Street and, 90 Croatia Street - Parkland Conveyance" which approved the acceptance of on-site parkland dedication subject to the owner transferring the parkland to the City free and clear, above and below grade, of all easements, encumbrances, and encroachments, with exception of the Garrison Trunk Sewer.

<https://secure.toronto.ca/council/agenda-item.do?item=2020.MM24.10>

City Council, at its meeting on December 17 and 18, 2019, adopted item TE11.5 entitled "1141 Bloor Street West, 980 Dufferin Street, and, 90 Croatia Street - Official Plan Amendment and Zoning Amendment Application - Request for Directions Report" which authorized staff to attend Local Planning Appeal Tribunal to revise Official Plan and Zoning By-law Amendment.

<https://secure.toronto.ca/council/agenda-item.do?item=2019.TE11.5>

## COMMENTS

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An application has been received from Fitzrovia Real Estate Inc. on behalf of the Owner to construct a pedestrian Tunnel underneath Bloor Street West (the "Public Highway") connecting the Owner's lands, which is located at 1141 Bloor Street West and 980 Dufferin Street, and Dufferin Subway Station. The Tunnel will be publicly accessible, and will improve the connectivity of the subway station by having additional access points.

The proposed Tunnel will be located west of Dufferin Street, crossing the Public Highway. See Attachments 1 and 2 for the general location of the Tunnel.

The Tunnel at its shallowest point is 1.69 metres below grade which is greater than the minimum 1 metre depth of cover as outlined in the Municipal Consent Requirements ("MCR"). The bottom of the Tunnel has a clearance of 1.18 metres from a 1425mm CIR. BR. Combined Sewer. The Owner is responsible for meeting Toronto Water's clearance requirements and/or satisfying Toronto Water's acceptable alternatives.

As there may also be potential impacts to existing utility infrastructure, 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 Highway.

The design of the Tunnel has been submitted as double stamped, signed, and dated by professional engineers.

In order to construct the Tunnel, alternating partial closure of the Public Highway will be required in various phases throughout 2025 and 2026. There will be a separate report, entitled "Construction Staging Area – 1141 Bloor Street West" from the Director, Traffic Management, Transportation Services to be presented to Council seeking approval for the road closure.

The Agreement is required in order to grant permission for the construction of the Tunnel within the Public Highway and to set out the Owner's responsibilities for the maintenance, repair and operation of the Tunnel. The Agreement will also secure public accessibility and use of the Tunnel.

The north end of the Tunnel will connect to City-owned lands (the "North City Lands") managed by Corporate Real Estate Management and Toronto Transit Commission ("TTC"). A separate licence agreement is required between the Owner and the City. A TTC Construction Agreement is also required following a technical review for this Tunnel connection. TTC has advised that Fitzrovia Real Estate Inc. has provided the requisite information and responses to close all open comments in its technical review.

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

Transportation Services has reviewed and determined that the application for the construction of the proposed Tunnel will not negatively impact the Public Highway and therefore, Transportation Services recommends approval of said application, provided that the Tunnel be conditional upon the Owner entering into an agreement with the City to permit the construction and maintenance of the portion of the Tunnel within the North City Lands. The Owner is required to satisfy all conditions of approval set out in the recommendations of this report and must comply with Transportation Services' procedures for granting approval of tunnels.

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

## **CONTACT**

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

## **SIGNATURE**

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Antonia Markos  
Director, Permits and Enforcement, Transportation Services

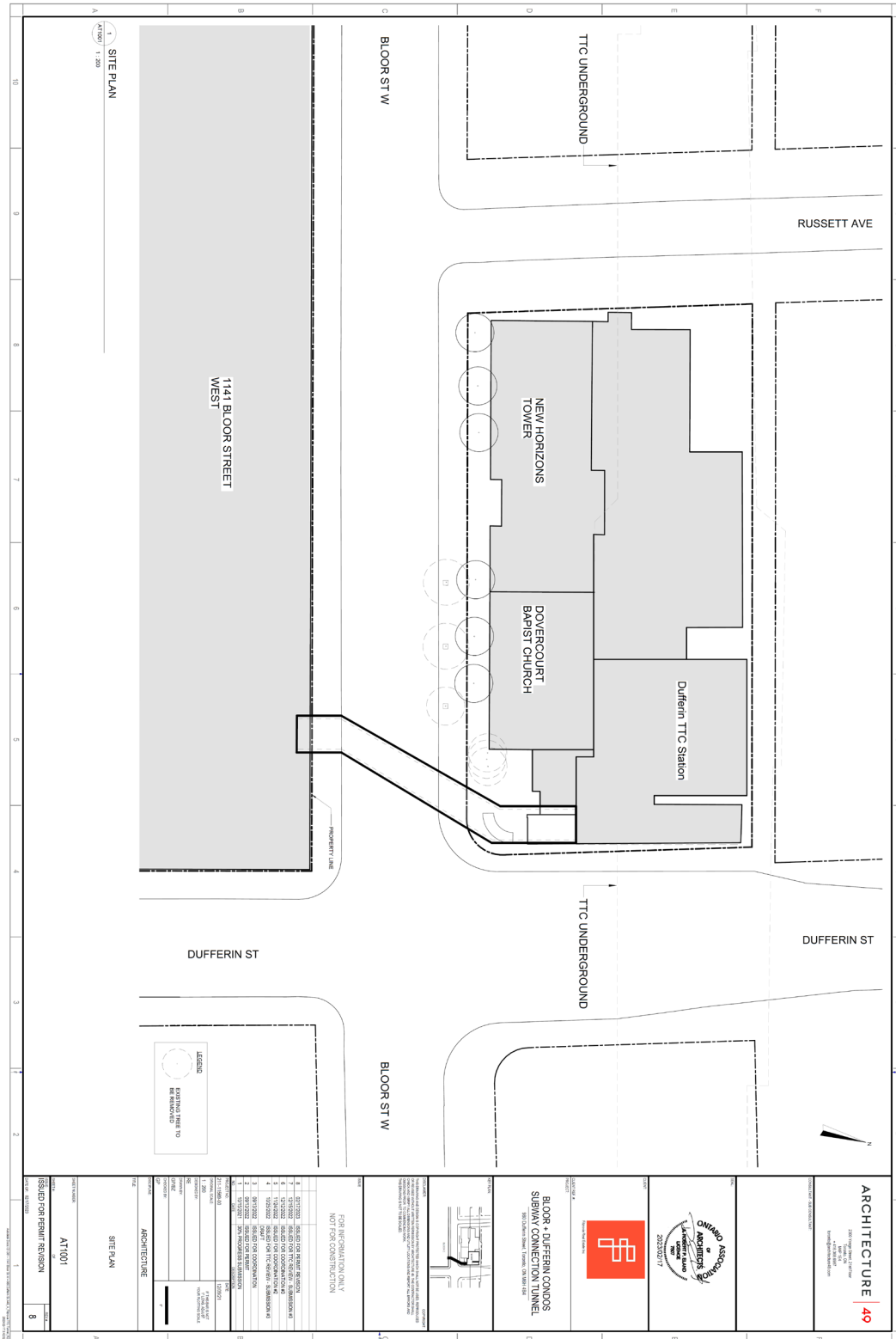
## **ATTACHMENTS**

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- Attachment 1 - Site Plan 1
- Attachment 2 - Cross Section Drawing
- Attachment 3 - Major Terms and Conditions
- Attachment 4 - Appendix A of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use of

# ATTACHMENTS

Attachment 1: Site plan showing pedestrian Tunnel underneath Bloor Street West connecting the Owner's Lands and Dufferin Subway Station.





## Attachment 3

### Major Terms and Conditions

- a. the Owner shall, at its own expense, design, construct, repair and maintain the Tunnel 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 Tunnel, at no expense to the City;
- b. the design and construction of the Tunnel shall comply with the Canadian Highway Bridge Design Code (CAN/CSA), including without limitation for highway loading purposes, including allowance for impact factors, as same may be amended, superseded or replaced from time to time;
- c. the Owner shall obtain all Public Utility Coordinating Committee clearances and/or sign-offs from the public utility companies and satisfy any requirements they may have;
- d. the Owner shall ensure any design of the Tunnel that impacts Toronto Water's infrastructure shall meet Toronto Water's standards and approval conditions, as determined by Toronto Water in their sole discretion;
- e. where the Municipal Consent Requirements' preferred depth of cover cannot be met, the Owner shall secure a consent/exemption from the GM prior to submission of a permit application;
- f. the Owner shall obtain approval and all necessary permits and agreements for the construction of the Tunnel from the Toronto Building Division and Toronto Transit Commission, if required;
- g. prior to commencement of construction, a construction permit and street occupation permit shall be obtained by the Owner in accordance with Article III of Chapter 743, Streets and Sidewalks, City of Toronto Municipal Code;
- h. the Owner shall submit and adhere to an accepted Traffic Management Plan, Construction Management Plan, Construction Schedule letter and Traffic Assessment Study outlining the proposed construction/installation of the Tunnel and advise on the impacts in the area of the proposed Tunnel within the Public Highway, which content shall be to the satisfaction of the GM, prior to the issuance of a Construction Permit;
- i. the Owner shall secure the consent of the Toronto Transit Commission for the physical linkage of the Tunnel to Dufferin Subway Station, prior to commencing the construction of the Tunnel, which consent shall be in a form satisfactory to the GM;
- j. the Owner shall pay (i) an annual licence fee in the amount of \$5,097.60, 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 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 Tunnel;

m. the City shall not be responsible for repairing or replacing the Tunnel damaged as a result of street repairs, construction or other municipal activities on the public highway;

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 Tunnel, 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 thirty (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 satisfactory to the GM, to be retained by the City, for the duration of construction of the Tunnel within the Public Highway, to secure against any damage to the Public Highway and to guarantee construction of the Tunnel and that the work within the Public Highway is completed to the City's satisfaction, including the restoration of the Public Highway, to the satisfaction of the GM; failing which the City may in its sole discretion draw down upon the letter of credit in such amount(s) as required to complete the Owner's obligations under the Agreement. Prior to the release of the letter of credit, the Owner will be required to provide a construction sign-off letter stamped and signed by the structural engineering firm that designed the Tunnel which states that the Tunnel is safe and ready to be opened to pedestrian traffic;

r. the Owner shall pay the City all costs related to the engineering review and inspection fees;

s. the Owner shall provide as-built drawings within sixty (60) days of completing the construction of the Tunnel to Survey and Mapping at [engsvy@toronto.ca](mailto:engsvy@toronto.ca), as well as to Transportation Services, Right of Way Management, Construction Activities, 55 John Street, 17th Floor, Metro Hall, Toronto, Ontario M5V 3C6;

t. the Owner shall submit a survey for the Tunnel which includes the location and area of the Tunnel in square-metre, upon completion of the Tunnel;

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

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

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

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

y. the Owner agrees that the City shall have the right of entry onto the Owner's Lands to access the Tunnel for the purposes of inspection, repair, or removal of the Tunnel or performing any other activity permitted by the City under the Agreement, on terms acceptable to the GM;

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

aa. shall require the Owner to adhere to applicable federal, provincial or municipal laws, by-laws, policies including the City of Toronto Municipal Code

and Transportation Services' standard process for acquisition of encroachment agreements;

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

cc. the Owner shall, at its own cost, charge and expense, and to the satisfaction of the GM, alter or remove the Tunnel if deemed necessary for municipal purposes by the GM, upon receiving not less than three (3) months' notice in writing from the GM, or such other time as deemed reasonable by the GM;

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

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

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

gg. the Agreement shall be conditional upon the Owner entering into a construction and licence agreement with the City, as owner of the North City Lands, for the portion of the Tunnel connecting to Dufferin Subway Station and located within the North City Lands (the "Construction and Licence Agreement"). This Agreement will automatically terminate if the Construction and Licence Agreement terminates.

## **Attachment 4**

### **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.