



STAFF REPORT ACTION REQUIRED

License Agreement between City of Toronto and YWCA of Greater Toronto for the Shared Use of a Portion of Rexlington Park

Date:	June 11, 2007
To:	Government Management Committee
From:	General Manager, Parks, Forestry and Recreation
Wards:	Ward 2 – Etobicoke North
Reference Number:	

SUMMARY

The purpose of this report is to request Council authority to negotiate and enter into a twenty (20) year License Agreement with the Young Women’s Christian Association of Greater Toronto (YWCA) for the shared use of approximately 962.5 square meters in Rexlington Park. This portion of the park, being referred to in this report as the Licensed Premises, will be used as a naturalized play space for children served by the adjacent YWCA childcare facility, on weekdays during the facility’s hours of operation.

The proposed license for the shared use of the Licensed Premises will provide the Parks, Forestry and Recreation Division with the opportunity to develop and deliver a high quality, accessible recreational open space that will support and contribute to the quality of life of the children of the adjacent daycare facility, as well as the surrounding community.

RECOMMENDATIONS

The General Manager of Parks, Forestry and Recreation Division recommends authority be granted to negotiate and enter into a twenty (20) year License Agreement with the Young Women’s Christian Association of Greater Toronto (YWCA) for the shared use of approximately 962.5 square meters in Rexlington Park to be used as a naturalized play space for the children served by the adjacent YWCA daycare facility, on weekdays during the operational hours of the facility, and in accordance with terms and conditions set out in Appendix “A” to this report and such other terms and conditions as

are acceptable to the General Manager of Parks, Forestry and Recreation, and all in a form and content satisfactory to the City Solicitor.

FINANCIAL IMPACT

The YWCA will be paying a nominal License Fee of Two Dollars (\$2.00) for the duration of the term of the License and shall be required to construct a fenced naturalized play space at no cost to the City for the shared use of the Leased Premises. The YWCA shall also be solely responsible for any and all taxes resulting from the use of the Licensed Premises, including all costs of installation and payment of all required utilities, including, but not limited to, water, hydro, gas and any other services to the Licensed Premises throughout the Licensed Term.

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

DECISION HISTORY

In February 2003, Toronto City Council approved assistance under the *Let's Build* program to the YWCA to develop and operate affordable housing and a child care centre on the vacant city-owned property on Bergamot Avenue, located west of Rexlington Park. In order for the YWCA to fulfill their requirements for outdoor play space in accordance with the Day Nurseries Act, a portion of Rexlington Park, adjacent to the childcare facility, is required for the purpose of constructing a fenced naturalized play space for the shared use of the children served by the adjacent YWCA daycare facility, on weekdays during the operational hours of the facility.

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030204/adm1rpt/cl009.pdf>

<http://www.toronto.ca/legdocs/2003/agendas/council/cc030204/pof1rpt/cl021.pdf>

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060425/pof3rpt/cl027.pdf>

ISSUE BACKGROUND

The YWCA is proposing to enter into a License Agreement with the City for the shared use of approximately 962.5 square meters in Rexlington Park for a fenced naturalized play space for the children served by the adjacent daycare facility, on weekdays during the operational hours of the facility. The play space will be open and available to the public on weekdays from 6:00 p.m. and all day on weekends and statutory holidays during the term of the agreement and is to be used as active or passive open space parkland.

COMMENTS

The Agreement will be for a twenty (20) year term commencing on August 1, 2007 and ending July 31, 2027.

The YWCA shall be solely responsible for any and all ongoing maintenance and operating costs of all play space structures or equipment on the Licensed Premises. The YWCA shall ensure that the installation of any play structures or equipment is in accordance with the standards as set out in the Day Nurseries Act and with CAN/CSA-Z614 standards. The YWCA shall also be responsible for regularly-scheduled inspections of any play space structure or equipment installed by the YWCA and shall be solely responsible for the cost of any upgrade, repair and/or replacement of any play structures or equipment as required and if damaged through normal wear or vandalism.

The City shall continue to be responsible for the ongoing maintenance of the open grassed area within the Licensed Premises including grass cutting, fertilization and weed control, in accordance with the City's park maintenance schedule and operating budget for Rexlington Park.

The architectural plans for the proposed improvements will be approved by the City and will be inspected upon completion to ensure compliance to City standards as a condition of the License Agreement.

The General Manager of Parks, Forestry and Recreation Division recommends that the City enter into a License Agreement with the YWCA in accordance with terms and conditions set out in this report and such other terms and conditions as are acceptable to the General Manager of Parks, Forestry and Recreation, and all in a form and content satisfactory to the City Solicitor.

The proposed license for the shared use of the Licensed Premises will provide the Parks, Forestry and Recreation Division with the opportunity to develop and deliver a high quality, accessible recreational open space that will support and contribute to the quality of life of the children of the adjacent daycare, as well as the surrounding community.

CONTACT

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SIGNATURE

Brenda Librecz,
General Manager, Parks, Forestry and Recreation Division

Appendix “A”

Terms and Conditions

1. Licensed Premises:

A portion of the park known as Rexlington Park, located on the north side of Bergamot Avenue, west of Islington Avenue, municipally known as 70 Bergamot Avenue, which will be fenced and reserved for the purpose of a naturalized play space for the shared use of the children served by the adjacent YWCA daycare facility, on weekdays during the operational hours of the facility, as depicted on the proposed drawing attached (to be known as Schedule "A"), and subject to the review and approval of City of Toronto officials, Committee and Council as required.

The Licensed Premises shall include the entire portion of fenced park land measuring 962.5 square meters but shall not include any park land beyond the boundary of the fenced Licensed Premises.

The Licensee shall not have the right to use any land beyond the boundary of the Licensed Premises. However, the Licensee may apply for permits to use additional park space from time to time, such permits being assessed on their impact on the surrounding land.

The Licensee ensures that the Licensed Premises shall be open for public use on weekdays from 6:00 P.M. and all day on weekends and statutory holidays during the term of the agreement.

2. Licensee:

YWCA of Greater Toronto

3. Use:

The Licensed Premises shall be used as a naturalized play space for the shared use of the children served by the adjacent YWCA daycare facility, on weekdays during the operational hours of the facility.

The Licensed Premises shall be open and available to the public on weekdays from 6:00 P.M. and all day on weekends and statutory holidays during the term of the agreement and are to be used as active or passive open space parkland.

The surrounding parklands are to be used by the public as active or passive open space parkland and the Licensee and park visitors shall have no exclusive rights or claim to use the park without the approved City permits.

4. License Term:

The License Term shall be for a period of twenty (20) years commencing on August 1, 2007 and ending July 31, 2027.

5. License Fee:

The rent shall be a nominal amount of Two Dollars (\$2.00) for the duration of the term of the License.

Should the naturalized play space, including, but not limited to, the fence, any structures or any signs, be damaged by vandalism or an act of nature, the Licensee shall be solely responsible for all costs associated with the repair and/or replacement. If the Licensee fails to perform the required repairs, the City may complete the said repairs and bill the Licensee for all costs involved.

The Licensee shall be responsible for any and all taxes resulting from the use of the Licensed Premises.

6. Utilities and Maintenance:

The Licensee shall be solely responsible for any and all costs associated with the construction and development of any improvements on the Licensed Premises. The Licensee shall be solely responsible for the ongoing maintenance and operating costs of any play space structures or equipment on the Licensed Premises. The Licensee shall ensure that the installation of any play structures or equipment is in accordance with the standards as set out in the Day Nurseries Act and with CAN/CSA-Z614 standards. The Licensee shall also be responsible for regularly scheduled inspections of any play space structure or equipment installed by the Licensee and shall be solely responsible for the cost of any upgrade, repair and/or replacement of any play structures or equipment as required and if damaged through normal wear or vandalism.

The Licensee shall be solely responsible for the cost of installation and the payment of all required utilities, including, but not limited to, water, hydro, gas and any other services to the Licensed Premises throughout the Licensed Term.

The City shall be responsible for the ongoing maintenance of the Licensed Premises including grass cutting, garbage collection, fertilization and weed control, in accordance with the City's park maintenance schedule for Rexlington Park.

7. Termination:

It is mutually agreed that if the Licensee shall default in any of the terms, conditions, or covenants or provisions of the License, the City may forward notice in writing of such default to the Licensee, and failure of the Licensee to cure such default to the satisfaction of the City of Toronto within fifteen (15) days after the date of the receipt of the notice shall, at the option of the City work as a forfeiture of the Licensee and shall give the City the right , at its option to treat this License as cancelled and terminated, and the term and estate vested in the City of Toronto, as well as all other rights of the Licensee hereunder, shall immediately cease and expire as fully and with like effect as if the entire terms herein provided for had expired, and the City may enter the demised premises, with or without process of law, and take possession together with and all improvements which may have been erected thereon, the Licensee waiving any demand for possession thereof, and all improvements made upon the premises shall be forfeited and become the property of the City as liquidated damages without compensation thereof to the Licensee.

Notwithstanding the foregoing, all play structures and equipment shall remain the property of the Licensee and if the Licensee should be in default of this agreement in any manner described above, the Licensee will be obliged to remove these structures and/or equipment from the Licensed Premises at its sole expense. If the Licensee chooses to leave these structures and/or equipment on the Licensed Premises, they shall become the property of the City.

Upon termination the Licensee must return the Licensed Premises, at its sole expense, to a reasonable condition acceptable to the General Manager of Parks, Forestry and Recreation or his/her designate.

8. Construction:

The Licensee shall not make improvements and/or install a naturalized play space complete with surrounding fence, without the prior City approval of all drawings and plans and without the appropriate written City approvals.

The Licensee shall be solely responsible for any and all costs and liabilities associated with the transportation of the construction materials to the site. The Licensee shall be responsible to ensure that the fence, play structure and any equipment used for construction are moved to their designated locations through the Licensed Premises in such a manner that there is no damage to existing trees or tree canopies. The Licensee shall provide a detailed site and transport plan that includes the height of any materials or equipment used during transportation and installation.

The Licensee shall be responsible to provide protection to any and all trees that may be potentially damaged during installation and renovation or during any aspect of on site work. The location and type of protection provided must be

approved by City officials. There shall be no work performed or storage of any materials in the tree protection zones.

The Licensee shall ensure that the construction site is secure and meets all safety and building code requirements. All materials and equipment must be stored within the hoarding area. The City shall not be liable for any materials or equipment stored on site. The location and type of hoarding barrier provided must be approved by City officials. The City shall have the right to inspect the construction site at any time without prior notice.

The Licensee shall ensure that the construction site is kept in a clean and orderly state at all times. The Licensee shall be responsible for the timely and safe removal of all garbage and excess construction materials. There is to be no garbage stored on the Licensed Premises.

The storage of fuel of any nature will not be permitted on the Licensed Premises at any time whatsoever.

The City will not be responsible or liable, in any form whatsoever, for damage or theft to the Licensee's or the Licensee's agents equipment and/or personal property from, but not limited to, use, storage or vandalism.

The Licensee shall not store any construction materials or equipment on the access road or walkways into the park.

9. Indemnity:

(1) The Licensee shall at all times indemnify and save harmless the City of and from any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever (including those under or in connection with the *Workplace Safety and Insurance Act, 1997* or any successor legislation), made or brought against, suffered by or imposed on the City or its property in respect of any loss, damage or injury (including fatal injury) to any person or property (including, without restriction, employees, agents and property of the City or of the Licensee) directly or indirectly arising out of, resulting from or sustained as a result of the Licensee's occupation or use of, or any operation in connection with, the Licensed Area or any fixtures or chattels thereon (including water left running, gas that escapes or imperfect or insufficient installation of any construction or other improvement thereon).

(2) The Licensee shall fully indemnify and save harmless the City against and from all liens and other claims under the *Construction Lien Act* or any successor legislation related to any work performed by or at the direct or indirect request of the Licensee at the Licensed Area, and shall at its own expense see to the removal from the registered title to the Licensed Area and/or surrounding lands, by discharge or Order, of any claim for such lien or Certificate of Action in

connection therewith, promptly and in any event within Ten (10) Days of being notified in writing by the City to do so, failing which the City may see to such removal and recover the expense and all attendant costs from the Licensee as licence fees owing and in arrears.

10. Insurance:

The Licensee shall, at all times during the term and any extension or renewal thereof, at its own expense and in the names of the Licensee and the City maintain in full force insurance coverage for legal liability for bodily injury, death or property damage in the amount of Five Million Dollars (\$5,000,000) per occurrence. Every policy shall provide cross-liability coverage protecting the City in respect of claims by the Licensee. An original Certificate of Insurance is required upon execution of the Licensee agreement. The Insurance provision must be in a form and content acceptable to the City of Toronto Treasurer at all times and may be amended from time to time.

11. Hazardous Substances:

The Licensee covenants that during its occupation of the land area no Hazardous Substances, as defined by the Environmental Protection Act or any other applicable Act, as amended from time to time, shall be placed or left on the site area at any time for any reason whatsoever.

12. Signage:

The Licensee shall not erect or post any signs without the written approval of the General Manager of Parks, Forestry and Recreation. All signs must be of a size, design and construction that is satisfactory to the General Manager and must meet all laws and by-laws relating to signs.

13. Removal of Trees:

Any removal or pruning of trees by the Licensee is strictly forbidden. The City shall determine which, if any, trees are to be removed. The Licensee shall be solely responsible for the cost of any tree removal and/or replacement. Destruction or removal of any tree by the Licensee shall be a breach of the License Agreement and the Licensor may terminate the agreement by 24 hours notice.

14. Assignment:

The Licensee shall not assign or sublet without the prior written consent of the General Manager of Parks, Forestry and Recreation, which consent may be arbitrarily or unreasonably withheld.

- 15.** The Licensee shall comply with all federal, provincial and municipal laws, including without limitation, all environmental legislation, and shall comply by-laws, regulations and rules affecting the Licensed Premises and their use, including the obtaining of all necessary consents, permits, Licenses and inspections at its own expense and to indemnify the City against all costs and other liability resulting from its failure to comply. The Licensee also covenants and agrees that it shall not carry out any work on the Licensed Premises without first receiving all necessary consents, permits, Licenses and inspections from all governmental and regulatory authorities having jurisdiction.
- 16.** The Licensee agrees that it does not retain any density rights that could be applicable to the Licensed Premises and any density acreage may be transferred to another site with no right of compensation.