

**Pedestrian Tunnel Agreement – Park Home Avenue
(North York Civic Centre and Gibson Square)**

Date:	June 3, 2013
To:	Government Management Committee
From:	Chief Corporate Officer General Manager, Transportation Services
Wards:	23 – Willowdale
Reference Number:	P:\2013\Internal Services\RE\Gm13016re (AFS #17732)

SUMMARY

This report requests authority to enter into a pedestrian tunnel agreement with Menkes Gibson Square Inc. for an underground pedestrian tunnel connection to be constructed, maintained, repaired and operated by Menkes for a pedestrian route under Park Home Avenue to connect the Menkes Gibson Square development with the North York City Centre Mall.

RECOMMENDATIONS

The Chief Corporate Officer and the General Manager, Transportation Services recommend that:

1. City Council grant authority to negotiate and enter into a pedestrian tunnel licence agreement (the "Agreement") with Menkes Gibson Square Inc. ("Menkes"), for the purpose of constructing, maintaining, repairing and operating an underground pedestrian tunnel substantially on the terms and conditions set out in Appendix "A" of this report, and on such further terms and conditions as may be acceptable to the Chief Corporate Officer, or her designate, and in a form acceptable to the City Solicitor.

2. City Council authorize the Chief Corporate Officer or her designate, to administer and manage the Agreement, including the provision of any consents, approvals, notices and consent to assignments provided that the Chief Corporate Officer may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.

Financial Impact

Revenue of \$2,722.50 per annum for the first five years of the agreement.

For each subsequent five year period following the Fee Commencement Date, the fee will be reviewed and a new fee will be determined applying the formula used to establish the initial fee.

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

DECISION HISTORY

Menkes has entered into a Section 37 Agreement with the City which requires that Menkes construct an underground pedestrian tunnel underneath Park Home Avenue. The Section 37 Agreement sets out the requirement for a tunnel underneath Park Home Avenue connecting the residential condominium complex to the North York City Centre complex (the "GWL Building"), built on City-owned lands ground leased to The Great-West Life Assurance Company and London Life Insurance Company (collectively, "GWL"). This Staff Report sets out the specific terms and conditions relating to the tunnel.

Pursuant to NY 32.44 adopted by City Council March 31 and April 1, 2010, and to MM 52.36 adopted by City Council August 25, 26 and 27, 2010, Menkes, the City and GWL have entered into a Connection Agreement respecting the construction, operation and maintenance of the tunnel connection to the GWL Building (the "Tunnel Connection") wherein the constructing and maintaining of the tunnel and the Tunnel Connection is the sole responsibility of Menkes.

COMMENTS

Real Estate Services and Transportation Services have negotiated an agreement for the Tunnel that meets the requirements of the Section 37 Agreement.

Engineering and Construction Services is supportive of the Licence Agreement and will be overseeing the construction activities on the project. They have reviewed and accepted the plans and drawings for such Tunnel construction activities prepared by Menkes' consultants. Further, all of the works related to municipal infrastructure improvements, including those within and outside of the Property, are undertaken and

governed by Municipal Infrastructure Agreements between Menkes and the City through Engineering and Construction Services.

Menkes shall be responsible for the all cost associated with the construction of the Tunnel and upon such completion shall be the rightful owner of the Tunnel.

Real Estate Services staff consider the terms and condition of the Licence agreement to be fair, reasonable and market value.

CONTACT

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SIGNATURES

Josie Scioli
Chief Corporate Officer

Stephen Buckley
General Manager
Transportation Services

ATTACHMENTS

Attachment 1 – Major Terms and Conditions of Licence Agreement
Attachment 2 – Location Map

Attachment 1

Major Terms and Conditions

Pedestrian Tunnel Agreement with Menkes Gibson Square Inc.

Licensee: City of Toronto

Licensors: Menkes Gibson Square Inc.

Premises:

"Premises" means that portion of the subsurface lands, are under the road surface of the Park Home Avenue which are required for the construction of the Tunnel (as per attached sketch).

Fee: \$2,722.50 per annum for the first five years of the agreement

Each subsequent five year period following the Fee Commencement Date shall be determined by the City by multiplying (a) the area (in square feet) of the horizontal area occupied by the Tunnel within Park Home Avenue by (b) the fair market value (per square foot) of vacant land in the vicinity available for commercial building purposes, by (c) twenty percent (20%) and by (d) the then current reference rate of interest announced by the Bank of Nova Scotia for determining interest rates on Canadian dollar commercial loans in Canada and commonly known as "prime rate".

Fee Commencement Date:

The earliest of:

- (i) the date of completion of the work set out in the Plans and Drawings, and the opening of the Tunnel to the Public or;
- (ii) twenty-four (24) months following the date of commencement of the construction of the work set out in the Plans and Drawings;

Menkes shall pay the Annual Fee each year on the anniversary date of the Fee Commencement Date.

Term:

The Term commences October 1, 2013 and terminates December 10, 2083.

Termination:

The City shall, at any time after the removal of the Tunnel or the demolition of building being built on the property, terminate the License, without compensation, upon giving Menkes or its successors, written notice at least one year in advance of such termination. Upon termination of the Licence, Menkes will at its expense, remove the Tunnel to the original property line, and restore the lands to their existing condition to the satisfaction of the City.

Insurance:

Commercial General Liability Insurance. \$5,000,000, per occurrence.

During any period of construction the limit of liability will be in the amount of not less than \$10,000,000 and extends to include Personal Injury Liability, Broad Form Contractual Liability, Owner's and Contractor's Protective Coverage, Completed Operations Coverage, Contingent/Employer's Liability, Non-Owned Automobile Liability. The policy will include a Cross Liability and/or Severability of Interest Clause of standard wording and, if applicable to the insured operations, coverage for blasting, pile driving and collapse. The above policies will include the City as an additional insured.

Repairs:

The Licensee shall be responsible for the operation and, all maintenance and repairs of the tunnel.

Assignment:

Licensee is entitled, with the City's written consent, to convey or assign its interest in the Agreement to any purchaser, mortgagee or lessee of the Property. Upon any such conveyance, mortgage or lease, such parties or their individual successors shall forthwith deliver to the City a notice of the conveyance or assignment executed by the party.

Tunnel

APPROXIMATE LIMIT OF WATERMAIN, STORM AND SANITARY SEWER RELOCATION WORKS

LEGEND

▨ SOUTH TUNNEL LOCATION

menkes
Engineering, Inc.

GIBSON SQUARE

DATE	NO.	BY	CHK.	APP.	REVISION	DATE
10/1/00	1	J. Menkes				
PROJECT: GIBSON SQUARE						
SHEET: 1 OF 1						
FIGURE 1						
1						