

Nominal License Agreement with FoodShare Toronto #10739 for Non-Exclusive Use of Dragon Alley Community Gardens at 9 Bonar Place

Date: May 15, 2023

To: General Government Committee

From: Executive Director, Corporate Real Estate Management

Wards: 9 - Davenport

SUMMARY

The purpose of this report is to seek Council authority to enter into a non-exclusive nominal license agreement (the "License Agreement") with FoodShare Toronto #10739 (the "Licensee") over a portion of the City-owned land municipally known as 9 Bonar Place (the "Licensed Area") as more particularly outlined in Appendix A and Appendix B of this report, for an initial term of five years for the purposes of operating a community garden (the "Community Garden"). Toronto Parking Authority ("TPA") operates 9 Bonar Place as a municipal parking facility - Carpark 241 (the "Parking Facility").

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management recommends that:

1. City Council authorizes the City to enter into a license agreement (the "License Agreement") with FoodShare Toronto #10739 for a portion of the City-owned lands municipally known as 9 Bonar Place as outlined in Appendix A and Appendix B of this report, substantially on the terms and conditions set out in Appendix C and on such other or amended terms and conditions acceptable to the Executive Director, Corporate Real Estate Management, and in a form acceptable to the City Solicitor.
2. City Council authorizes each of the Executive Director, Corporate Real Estate Management, and the Director, Transaction Services, Corporate Real Estate Management individually to execute the License Agreement, and any related documents on behalf of the City.
3. City Council authorizes the Executive Director, Corporate Real Estate Management, their successors and designates, to administer and manage the

License Agreement, including the provision of any consents, approvals, waivers, notices (including notice of termination) provided that the Executive Director, Corporate Real Estate Management may, at any time, refer consideration of such matters to City Council for direction and determination.

FINANCIAL IMPACT

The License Agreement will be provided for nominal consideration. In accordance with the terms of the License Agreement, the Licensee will be responsible for all costs and expenses for the maintenance, repair, management and operation of the Licensed Premises, including any costs for landscaping, waste collection, disposal, recycling, snow removal, utilities. The Licensee is also responsible for any fees associated with the operation of the Licensed Premises and any costs associated with entering into any extensions, renewals, and/or amendments of the License Agreement and any and all costs associated with the review and provision of any necessary consents, including legal fees.

There is no impact to the surrounding parking areas, and as such, no financial impacts to parking operations.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the information as presented in the Financial Impact Section.

DECISION HISTORY

The Board of Directors of the TPA authorized and executed a nominal rate license agreement with the Licensee dated September 25, 2012, for a term commencing from July 1, 2012, and ending on December 21, 2017.

COMMENTS

Background

In 2007, the City acquired the lands located at 9 Bonar Place and redeveloped the lands as a 34-space surface Parking Facility. The Parking Facility contained the following three separate landscaped areas (collectively, the "Licensed Area"), as shown in Appendix B:

- West Limit of the Parking Facility (dedicated bio-swale) - Planter Area A;
- East Limit of the Parking Facility (dedicated bio-swale) - Planter Area B; and
- Centre Area of the Parking Facility (non-bio-swale) - Planter Area C.

The two dedicated bio-swales, Planter Area A and B (the "Bio-Swale Areas"), were designed to function as water retention zones for the Parking Facility, stipulated in the Parking Facility design criteria for the storm water runoff facility.

In early 2011, the Licensee, a non-profit group comprised of community members of living in close proximity to the Parking Facility, contacted TPA to request for permission to create a Community Garden within the Licensed Area. The proposal centered around allowing community members to plant edible produce within the Bio-Swale Areas.

Subsequently, TPA executed a nominal rate license agreement over the Licensed Area with the Licensee for a term commencing from July 1, 2012, and ending on December 21, 2017 (the "Original License Agreement"). In connection with the Original License Agreement, TPA completed a variety of improvements, including the installation of planter boxers, fencing and signage, representing an investment of approximately \$10,000.

Since 2012, the Licensee has been operating the Licensed Area as a Community Garden (also known as the "Dragon Alley Community Garden"), and has continued to occupy the area following the expiration of the Original License without further written agreement with the City/TPA.

New Nominal License Agreement

The Licensee wishes to continue its occupation of the Licensed Area to operate the Community Garden. As such, City staff recommend the City to enter into a non-exclusive nominal License Agreement with the Licensee for a period of five years with a Licensee's option to extend the term for a further period of five years. TPA staff have been consulted and no operational concerns were raised with respect to entering into the License Agreement as contemplated. The major terms and conditions of the new License Agreement are similar to the Original License and are outlined in Appendix C.

CONTACT

Alison Folosea, Director, Transaction Services, Corporate Real Estate Management,
416-338-2998, Alison.Folosea@toronto.ca

SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Appendix A - Property Sketch and Legal Description of Parking Facility

Appendix B - Aerial Image of Licensed Area

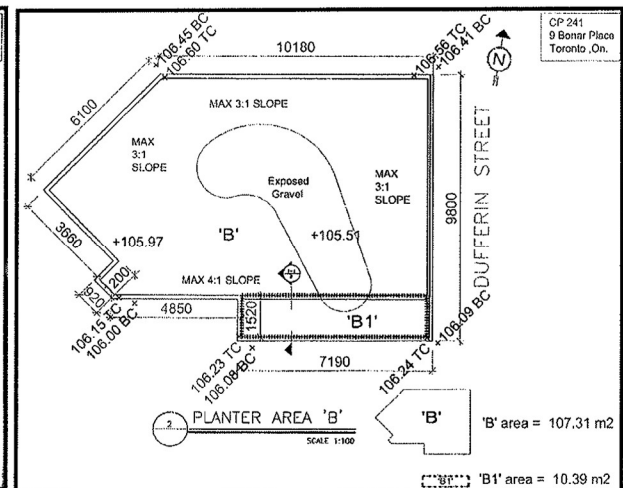
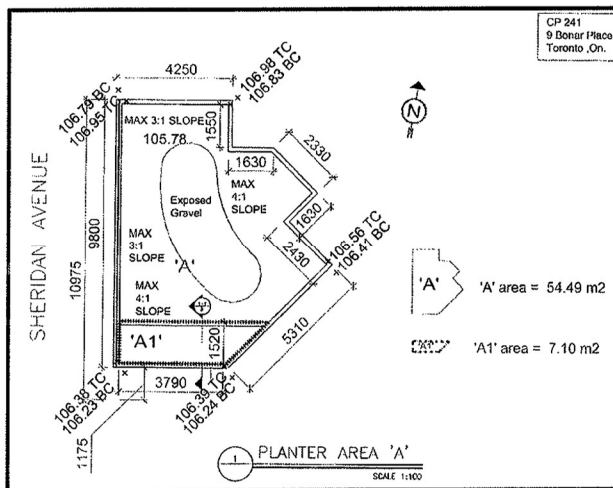
Appendix C - Major Terms and Conditions of the License Agreement

Appendix A - Property Sketch and Legal Description of Parking Facility

Legal Description: LT 15 PL 1265 CITY WEST; CITY OF TORONTO



Appendix B - Aerial Image of Licensed Area



Appendix C - Major Terms and Conditions of License Agreement

Licensors:	City of Toronto
Licensee:	FoodShare Toronto #10739
Location:	9 Bonar Place, Toronto, Ontario, M6H 1E4
Licensed Area:	Planter Area A, Planter Area B, and Planter Area C, collectively known as the Licensed Area, as outlined in Appendix B
Term:	Five years
Extension:	Provided that the Licensee is not in default at the time of the request and has never been in default beyond any applicable curing period, the Licensee shall have one option to extend the Term of the License for a period of five years at nominal rate
Type of Use:	Non-exclusive use of the Licensed Area as a community garden for the local residents (the "Community Garden")
License Fee:	\$2 for the Term

<p>Permitted Use:</p>	<p>The Licensee shall:</p> <ul style="list-style-type: none"> • grow edible plants only in the planter boxes identified as A1 and B1 in Planter Area A and Planter Area B, as outlined in Appendix B. • grow non-edible plants in the remaining areas of the Licensed Area and using only clean soil. • maintain the Community Garden in neat and tidy condition and remove all seasonal plants by December 1 of each calendar year. • maintain, replace, and top up mulch as required. • remove all weeds and dead plant material. • ensure that the balance of the Parking Facility and the gravel areas remain clear and free from mulch, soil, and plant material from the operation of the Community Garden. • not plant or allow any plants, except for trees, to grow in excess of three feet tall. • protect existing trees. • not erect any temporary or permanent structure(s) without the City's or TPA's prior written approval or attach anything to the structures of the Parking Facility, which structures include, but are not limited to, fences, hydro poles and phone poles. • only use the Licensed Area for the Permitted Use. • not engage in any activities which, in the opinion of TPA, obstruct or interfere with the operation of the Parking Facility. • maintain the Licensed Area to the standard of a model sustainable community garden (including regularly performing natural pest control activities as required) and disposing of all litter. • provide TPA with designs of any proposed alteration to the Licensed Area for TPA's approval prior to undertaking any work on the Licensed Area (it is acknowledged by the parties that TPA shall have no obligation to approve the alteration(s) and any alteration of the Licensed Area without prior written approval from TPA constitutes grounds for early termination of the License Agreement).
-----------------------	---

Capital Improvements:	<p>TPA has provided planter boxes in the Bio-Swale Areas, and Capital Improvements in the Licensed Area including, patio stones for a pathway(s) within the Licensed Area, bumper fencing surrounding all or part of the Licensed Area and soil and gravel for resurfacing the Bio-Swale Areas. The Capital Improvements will remain the property of TPA but will be maintained during the Term by the Licensee to the satisfaction of the TPA. Failure to maintain the Capital Improvements to the satisfaction of TPA constitutes grounds for early termination of the License Agreement.</p>
Insurance:	<p>The Licensee shall:</p> <ul style="list-style-type: none"> • Provide the City with a copy of the Licensee's insurance certificate in a form acceptable to the City and TPA, and upon request, provide the City and TPA with a copy of the Licensee's insurance policy. • maintain in full force and effect commercial general liability insurance no less than 5 million dollars per occurrence. • maintain automobile liability insurance for all owned or leased licensed motorized vehicles used in connection with the Community Garden no less than 2 million dollars per occurrence.
Termination:	<ul style="list-style-type: none"> • In the event the Licensee fails to perform or fails to comply with any of the terms and conditions of the License Agreement, and such default continues for ten (10) days after the City or TPA provides written notice thereof to the Licensee, then, without prejudice to and in addition to any other rights and remedies to which the City or TPA is entitled under the agreement, at law or in equity, the City shall thereafter have the right to terminate the License Agreement. • The parties shall each have the right, but not the obligation, to terminate the License Agreement upon not less than 30 days of prior written notice to the other party.