

DELEGATED APPROVAL FORM
DIRECTOR, REAL ESTATE SERVICES
MANAGER, REAL ESTATE SERVICES

TRACKING NO.: 2018-263

Approved pursuant to the Delegated Authority contained in Item EX27.12, as adopted by City Council on October 2, 3 & 4, 2017, as amended by Item GM27.12, adopted by City Council on May 22, 23 & 24, 2018 or, where applicable, in Item EX28.8, as adopted by City Council on November 7, 8 & 9, 2017.

Prepared By:	Kathie Capizzano	Division:	Real Estate Services
Date Prepared:	August 20, 2018	Phone No.:	2-4825

Purpose	To enter into a Licence agreement with Menkes Waterfront Holdings Inc. ("Menkes") for a construction staging and hoarding area, on a portion of Sugar Beach and the Waterfront Promenade, described as part of Block 7 & 9, on Plan 66M-2476.
Property	Part of Sugar Beach and the Waterfront Promenade, described as part of Block 7 & 9, Plan 66M-2476 and shown on the attached plan ("Licenced Lands")
Actions	<ol style="list-style-type: none"> The City enter into a License Agreement (the "License Agreement") with Menkes to allow a construction staging and hoarding area on the Licenced Lands, substantially on the terms and conditions outlined herein, and any other terms the Deputy City Manager, Internal Services may deem appropriate, and in a form satisfactory to the City Solicitor; The Deputy City Manager, Internal Services, or his/her designate, administer and manage the License Agreement including the provision of any consents, approvals, waivers, notices and notices of termination provided that the Deputy City Manager, Internal Services, may, at any time, refer consideration of such matters to City Council for its determination and direction; and The appropriate City Officials be authorized and directed to take the action necessary to give effect thereto.
Financial Impact	<p>The City is to receive revenue in the amount of \$9,805 per month plus HST or \$267,735 for the term of 27 months. Annual revenue is as follows: \$39,220 in 2018, \$117,660 in 2019 and \$107,855 in 2020.</p> <p>Annual revenue will be incorporated into the 2018 Council Approved Operating Budget for Parks, Forestry and Recreation and future budget submissions under cost center P10227. Revenue in the amount of \$11,000 per month plus HST is anticipated if Menkes exercises its option to extend the term for another year.</p> <p>The Interim Chief Financial Officer has reviewed this DAF and agrees with the financial impact information.</p>
Comments	<p>The City has entered into a Ground Lease with Menkes for Blocks 1 and 2 on Plan 66M-2476, upon which Menkes will be constructing a building known as the "Waterfront Innovation Centre (the "Development)". The Licensed Lands are part of Sugar Beach and the Waterfront Promenade and are a small strip adjacent to the west and south of the Development. Menkes requires the Licensed Lands for part of a construction staging area.</p> <p>As the lands are part of Sugar Beach and the Waterfront Promenade, Parks, Recreation and Forestry have been involved in and approves of these terms.</p> <p>As the Licensed Lands are located within the Designated Waterfront Area, the Director Waterfront Secretariat has reviewed and approved this transaction.</p>
Terms	See Schedule B

Property Details	Ward:	28 – Toronto Centre Rosedale
	Assessment Roll No.:	
	Approximate Size:	irregular
	Approximate Area:	169 square metres (1,819 square feet)
	Other Information:	

A.	Manager, Real Estate Services has approval authority for:	Director, Real Estate Services has approval authority for:
1. Acquisitions:	<input type="checkbox"/> Where total compensation does not exceed \$50,000.	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.
2. Expropriations:	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$50,000.	<input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.
3. Issuance of RFPs/REOs:	Delegated to a more senior position.	<input type="checkbox"/> Issuance of RFPs/REOs.
4. Permanent Highway Closures:	Delegated to a more senior position.	<input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.
5. Transfer of Operational Management to Divisions and Agencies:	Delegated to a more senior position.	Delegated to a more senior position.
6. Limiting Distance Agreements:	<input type="checkbox"/> Where total compensation does not exceed \$50,000.	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.
7. Disposals (including Leases of 21 years or more):	<input type="checkbox"/> Where total compensation does not exceed \$50,000.	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.
8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan:	Delegated to a more senior position.	<input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.
9. Leases/Licences (City as Landlord/Licensor):	<input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$50,000. <input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding three (3) months, including licences for environmental assessments and/or testing, etc. Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.	<input checked="" type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$1 Million. <input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding six (6) months, including licences for environmental assessments and/or testing, etc. Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.
10. Leases/Licences (City as Tenant/Licensee):	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$50,000.	<input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$1 Million.
11. Easements (City as Grantor):	<input type="checkbox"/> Where total compensation does not exceed \$50,000. Delegated to a more senior position.	<input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million. <input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.
12. Easements (City as Grantee):	<input type="checkbox"/> Where total compensation does not exceed \$50,000.	<input type="checkbox"/> Where total compensation does not exceed \$1 Million.
13. Revisions to Council Decisions in Real Estate Matters:	Delegated to a more senior position.	<input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (u)).
14. Miscellaneous:	Delegated to a more senior position.	<input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences <input type="checkbox"/> (b) Releases/Discharges <input type="checkbox"/> (c) Surrenders/Abandonments <input type="checkbox"/> (d) Enforcements/Terminations <input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppels/Certificates <input type="checkbox"/> (f) Objections/Waivers/Caution <input type="checkbox"/> (g) Notices of Lease and Sublease <input type="checkbox"/> (h) Consent to regulatory applications by City, as owner <input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title <input type="checkbox"/> (j) Documentation relating to Land Titles applications <input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds

B. Director, Real Estate Services and Manager, Real Estate Services each has signing authority on behalf of the City for:

- Documents required to implement matters for which he or she also has delegated approval authority.
- Expropriation Applications and Notices following Council approval of expropriation (Manager, Acquisitions & Expropriations is only Manager with such signing authority).

Director, Real Estate Services also has signing authority on behalf of the City for:

- Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
- Community Space Tenancy Leases approved by delegated authority by Deputy City Manager, Internal Corporal Services and any related documents.

Consultation with Councillor(s)															
Councillor:	Lucy Troisi				Councillor:										
Contact Name:	Tom Davidson				Contact Name:										
Contacted by:	Phone	X	E-Mail		Memo		Other	Contacted by:	Phone		E-mail		Memo		Other
Comments:	No concerns				Comments:										
Consultation with Divisions and/or Agencies															
Division:	Parks, Forestry & Recreation				Division:	Financial Planning									
Contact Name:	Daniel Vella / Brian Majcenic / Sean Harvey				Contact Name:	Patricia Libardo									
Comments:	concur				Comments:										
Legal Division Contact															
Contact Name:	Kathleen Kennedy														

DAF Tracking No.: 2018-263	Date	Signature
Concurred with by: Manager, Real Estate Services		
<input checked="" type="checkbox"/> Recommended by: Manager, Real Estate Services Nick Simos	Aug. 28, 2018	For Signed by Alex Schuler
<input type="checkbox"/> Approved by:		
<input checked="" type="checkbox"/> Approved by: Director, Real Estate Services David Jollimore	Aug. 29, 2018	Signed by David Jollimore

General Conditions ("GC")

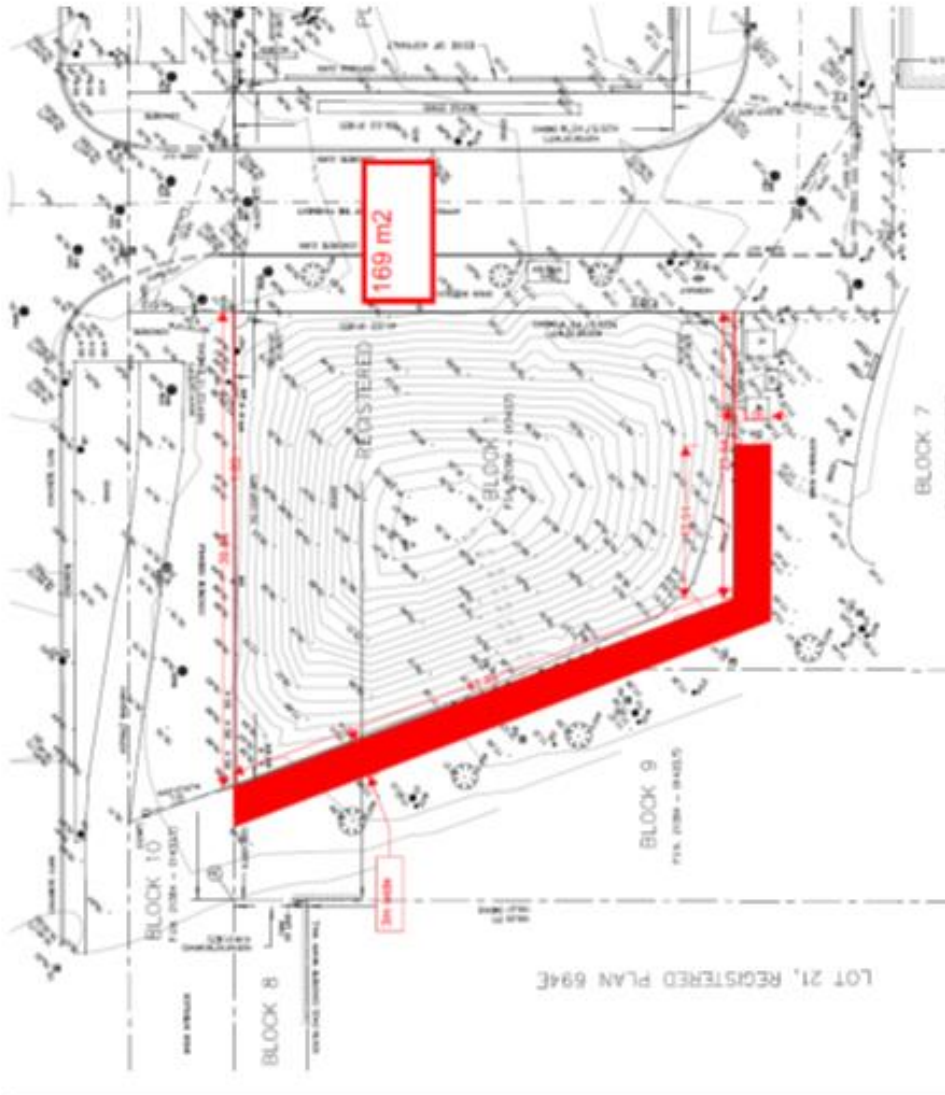
- (a) The local Councillor (or local Councillors if the subject property is located on a ward boundary or if the transaction involves an exchange of properties in more than one ward), will be consulted prior to the exercise of delegated Approving Authority by staff for all Acquisitions, Disposals, Land Exchanges and Leases. In the event of a vacancy in the Ward in which the subject property is located, the Mayor's office shall be consulted in the alternative.
- (b) Where approving power has been delegated to staff, the Deputy City Manager, Internal Corporate Services, in consultation with any other applicable Deputy City Manager or the City Manager, may determine that such matter is of such special interest that same should be returned to the relevant Committee and Council for consideration and determination.
- (c) Exercise of delegated authority is subject to all applicable Council policies, statutes or other applicable law.
- (d) Authority to approve financial commitments/expenditures is subject to all amounts being available in an approved budget, or funding being available from third party sources, except for "Strategic Property Acquisitions" as set out in EX44.22 adopted by Council August 25, 26, 27 and 28, 2014, which identifies alternative funding mechanisms subject to additional approval requirements.
- (e) Property interests are to be based on appraised value, and no interest shall be granted at less than market value unless otherwise specifically authorized.
- (f) Authority to approve transactions at less than market value is subject to statutory anti-bonusing provisions.
- (g) Total compensation means the aggregate of all types of payments, including land value, estimated clean-up costs, potential arbitration awards, loss claims, etc., but exclusive of any applicable taxes and registration costs.
- (h) Authority to acquire property is conditional upon provision being made to bring the property into compliance with applicable MOE or other requirements such that it will be fit for its intended municipal purpose, except for property acquisitions of 50M² or less for transit shelter purposes.
- (i) Authority to initiate the permanent road closure process in **A.4** is conditional upon confirmation by the GM of Transportation Services that it is feasible to permanently close the highway.
- (j) Disposal authorities in **A.7** are subject to the property having been declared surplus, and the disposal policy complied with.
- (k) Land exchanges, except for those in **A.8**, may be authorized based on the delegated Approving Authority for disposals in **A.7**.
- (l) Approving Authority with respect to land located in the Designated Waterfront Area as defined in the *Toronto Waterfront Revitalization Corporation Act, 2002* is conditional upon the approval of the Director, Waterfront Secretariat.
- (m) Authority to approve an exchange of land in **A.8** is conditional upon confirmation by the Chief Planner and Executive Director of City Planning, and the GM of Parks, Forestry & Recreation, that the land being exchanged is (i) nearby land of equivalent or larger area, and (ii) of comparable or superior green space utility.
- (n) Approving Authority in **A.9** Leases (City as Landlord) but not Licences (City as Licensor) is limited to periods (including options/renewals) of less than twenty-one (21) years, as leases of 21 years or more may be authorized based on the delegated Approving Authority for disposals in **A.7**.
- (o) Total compensation in leasing matters where the City is landlord (**A.9**) includes the value of tenant improvements if factored into tenant's rental payments.
- (p) Total compensation in leasing matters where the City is the tenant (**A.10**) includes the value of any tenant improvements to be paid by the City.
- (q) Where options/renewals are included in leases, if the renewal rent is to be determined at a date later than the original approval date, total compensation is to be calculated as though all options are exercised, estimating the renewal rent based on the highest rent payable in the first term of the lease.
- (r) Total compensation in leasing matters where the City is landlord (**A.9**) or tenant (**A.10**) is to be calculated from the date of approval pursuant to this delegation (ie. first allowing for the expiry of any prior approvals, whether by Council or a delegated authority).
- (s) Approving Authority in leasing matters includes authority to approve renewals/extensions within the parameters of the delegated Approving Authority.
- (t) Approving Authority includes authority for amendments within the parameters of the delegated Approving Authority, the cumulative total of which may not exceed the delegated financial limit.
- (u) Where proposed additional amounts in **A.13** exceed 10 per cent of the original decision, even if otherwise in compliance with all other conditions, then Approving Authority is transferred upwards to the next more senior level of Approving Authority having the relevant overall financial limit.
- (v) Approving Authority includes authority for all documents necessary to implement the authority, including ancillary agreements, on terms and conditions satisfactory to the Approving Authority, in consultation with the relevant operating Division(s).
- (w) Staff positions referred to in this delegation include successors from time to time.
- (x) Documents are to be in a form satisfactory to the City Solicitor (including indemnity and insurance provisions).
- (y) Delegated signing authorities in **B** are conditional upon the documents having received the City Solicitor's prior "Approval as to Form".
- (z) Authority to use land acquired by the City for parking purposes by the Toronto Parking Authority is conditional upon Council enacting a by-law designating such use.
- (aa) All residential leasing documents shall adhere to the *Residential Tenancies Act, 2006* and any successor legislation.
- (bb) Despite GC(n), Approving Authority in residential leasing matters is not limited to periods of less than twenty-one (21) years and total compensation in residential leasing matters where the City is landlord is to be calculated based on an assumed term of ten years unless the lease term expressly identified therein is longer.
- (cc) Where Approving Authority has been delegated to the Manager level, such authority shall be conditional upon the Manager first having secured the written concurrence of a second Manager within the Real Estate Services Division.
- (dd) Where the City is transacting with a public agency, and such agency requires that an unqualified environmental indemnity be granted by the City, the authority to acquire property includes authority to grant such an indemnity, provided that the Phase I and Phase II environmental site assessments undertaken on behalf of the City have identified no significant environmental impacts or human health threats, with no, or minor action required ("Low Risk").

SCHEDULE A

Terms:	Licensor:	City of Toronto
	Licensee:	Menkes Waterfront Holdings Inc.
	Term:	September 4, 2018 to December 3, 2020
	Extended Term:	With an option to extend for additional 1 year.
	Value:	\$9,805 per month plus HST \$11,000 per month plus HST the Extended term
	Area:	169 square metres (1,819 square feet)
	Use:	Constructing hoarding and laying and storing construction materials and equipment that will not compromise the environmental quality of the Licensed Lands, but the following are strictly prohibited uses: <ul style="list-style-type: none"> (i) stockpiling or storage of excavated materials or soils; (ii) fuel storage or fueling of vehicles or equipment; (iii) mechanical equipment; (iv) vehicles.
	Conditions:	Menkes agrees to comply with the Site Specific Requirements of Parks, Forestry and Recreation attached as Schedule "C" for the restoration of the Licensed Lands.

Environmental:

- (i) Menkes at its sole cost, expense and risk, observe and otherwise comply with all Environmental Laws during the Term of this Agreement and adhere to and satisfy all conditions and requirements of any Certificate of Property Use, Certificate of Requirement or Risk Assessments;
- (ii) Menkes shall retain an environmental consultant who is a "Qualified Person" as defined in O. Reg 153/04 of the Environmental Protection Act, as amended, and who is acceptable to the City and the City's peer reviewer acting reasonably, to undertake and perform any activities in relation to the conditions and requirements of any Record of Site Condition, any Certificate of Property Use, Certificate of Requirement or Risk Assessments;
- (iii) Menkes shall obtain a reliance letter for both the City and the City's peer reviewer, for all environmental reports prepared with respect to the Licensed Lands by or on behalf of Menkes.
- (iv) Menkes shall not cause or permit any Hazardous Material to be brought into, stored, kept or used in or about the Licensed Lands and/or the lands and premises adjoining or in the vicinity of the Licensed Lands or any part thereof, other than any Hazardous Material that is used in the ordinary course of the permitted use being carried on at the Licensed Lands and which is stored, kept and used in strict compliance with all Environmental Laws pertaining thereto;
- (v) Menkes shall remove from the Licensed Lands and dispose of any soil excavated which contains Hazardous Material in accordance with all applicable Environmental Laws; and
- (vi) Within the six (6) month period prior to the expiry of the Term, Menkes shall provide to the City, at their sole cost, an independent environmental audit or assessment report. Should the Exit Report reveal the presence of any Hazardous Materials, beyond those permitted by Environmental Laws, in, on or under the Licensed Lands that were not identified in the Pre-Existing Environmental Condition (being the condition described in the CPU and RSC), Menkes shall complete all remediation required on or before the end of the Term to achieve the standards required by Environmental Laws at that time.



SCHEDULE "C"

SITE SPECIFIC REQUIREMENTS OF PARKS, FORESTRY AND RECREATION

PRE-CONDITIONS TO COMMENCEMENT OF LICENSEE'S WORK:

Menkes agrees that it shall not commence any of Menkes' Work unless and until:

- (a) the City receives a pre-construction condition assessment and report by a suitable consultant retained by Menkes to the satisfaction of the GM of PF&R;
- (b) the City receives detailed construction management plans and specifications (collectively the "Specifications") to include the following:
 - i. a plan for managing granite mosaic pavement and pre-cast concrete unit pavers that demonstrates the extent of removal; temporary edge stabilization; the location of cobble stockpiling and/or storage; the replacement of cobbles; the cleaning and restoration after construction; and matching the existing park grades and drainage patterns;
 - ii. depth of excavation required for slab-on-grade;
 - iii. Menkes' plan for the excavation of the existing Silva Cells on the Licensed Lands;
- (c) the City receives details of the type of construction hoarding to be used, including the intended means of securing the construction hoarding in place;
- (d) Menkes obtains all necessary consents, permits, licences and inspections from all governmental and regulatory authorities having jurisdiction
- (e) Menkes delivers to the City certified funds or an irrevocable unconditional letter of credit in the amount of Thirty Six Thousand Dollars (\$36,000), which letter of credit shall be in a form and from a Canadian Chartered Bank acceptable to the City's Chief Financial Officer and Treasurer (the "Security"), as security for Menkes' obligations under this License Agreement; it being understood and agreed that in the event that Menkes defaults in its obligations, the City may draw upon the Security, and in the event that the Security is not sufficient to cover the City's costs in remedying such defaults, Menkes shall pay any additional amounts owing to the City with respect to such costs incurred forthwith upon demand. The General Manager may terminate this Agreement if Menkes fails to provide the Security by the Commencement Date;
- (f) all trees located on or close to the Licensed Area have been protected from damage in accordance with the City's "Specifications for Construction Near Trees" or any other tree protection measures deemed appropriate by the General Manager; and
- (g) Menkes has provided not less than seven (7) days' prior notice of commencement of Menkes' Work.

PERFORMANCE OF LICENSEE'S WORK:

- (a) there shall be no construction access through the park;
- (b) Menkes shall be responsible for the clean-up of any of its construction material or debris beyond construction hoarding in Sugar Beach as needed on an on-going basis; and
- (c) there shall be no crane swing over the Licensed Lands, Sugar Beach or the Waterfront Promenade;

REQUIREMENTS FOLLOWING COMPLETION OF LICENSEE'S WORK:

- (a) prior to partial surrender or termination of this Agreement, the Licensee shall conduct an inspection of the Licensed Area with Parks, Forestry & Recreation staff and review the conditions to ensure the Licensed Area has been adequately restored. The Licensed Area is to be restored to a condition that is in compliance with this Agreement before the Security will be returned to Menkes pursuant to paragraph (e) under "PRE-CONDITIONS TO COMMENCEMENT OF LICENSEE'S WORK", above.