

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

TRACKING NO.: 2019-347

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:	Patrick McCabe	Division:	Real Estate Services
Date Prepared:	December 12, 2019	Phone No.:	416 338 7941

Purpose	To obtain authority to enter into a five (5) year Licence Agreement (the "Agreement") with Evergreen (the "Licensee") to allow public programming (including temporary art installations) at various locations on the Lower Don Trail approved by Parks, Forestry & Recreation staff. The sites are City-owned, or managed by the City on behalf of the Toronto and Region Conservation Authority. See attached Appendix "A" for Key Map and Programming Zones.
Property	Lower Don Trail, Lower Don Parklands, Don Valley Brick Works Park, Don Landing (the "Parks")
Actions	<ol style="list-style-type: none"> 1. Authority be granted to enter into a Licence Agreement with Evergreen for the right to operate public programming at the Parks for the period commencing October 1, 2019 and ending on September 30, 2024, subject to the major terms and conditions outlined herein on page 4 and on such other terms as may be satisfactory to the Deputy City Manager, Corporate Services and in a form acceptable to the City Solicitor; 2. The General Manager – Parks, Forestry and Recreation shall administer and manage the Agreement, including the provision of any consents, approvals, waiver, notices and notice of termination provided that the Deputy City Manager, Corporate Services may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction; and 3. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.
Financial Impact	<p>Revenue to the City will be \$7,500.00 per annum (plus HST) for a net total of \$37,500.00 over the five (5) year term of the Agreement.</p> <p>The Chief Financial Officer and Treasurer has reviewed this DAF and agrees with the financial impact information.</p>
Comments	The City and the Licensee entered into a Fundraising Agreement dated February 2, 2015 under authority of City Council and the Licensee's Board of Directors. The Fundraising Agreement requires the parties to enter into a Licence Agreement for the purpose of accessing specific areas within the Parks for the purposes of community-based programming, as per the Licensee's obligations set out in section 5.2(a) of the Fundraising Agreement.
Terms	See page 4 for Major Terms and Conditions.

Property Details	Ward:	11 – University – Rosedale 13 – Toronto Centre
	Assessment Roll No.:	Multiple
	Approximate Size:	N/A
	Approximate Area:	
	Other Information:	

A.	Manager, Real Estate Services has approval authority for:	Director, Real Estate Services has approval authority for:
<p>1. Acquisitions:</p> <p>2. Expropriations:</p> <p>3. Issuance of RFPs/REOs:</p> <p>4. Permanent Highway Closures:</p> <p>5. Transfer of Operational Management to Divisions and Agencies:</p> <p>6. Limiting Distance Agreements:</p> <p>7. Disposals (including Leases of 21 years or more):</p> <p>8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan:</p> <p>9. Leases/Licences (City as Landlord/Licensor):</p> <p>10. Leases/Licences (City as Tenant/Licensee):</p> <p>11. Easements (City as Grantor):</p> <p>12. Easements (City as Grantee):</p> <p>13. Revisions to Council Decisions in Real Estate Matters:</p> <p>14. Miscellaneous:</p>	<p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$50,000.</p> <p>Delegated to a more senior position.</p> <p>Delegated to a more senior position.</p> <p>Delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p>Delegated to a more senior position.</p> <p><input checked="" type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$50,000.</p> <p><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.</p> <p>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p>Delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p>Delegated to a more senior position.</p> <p>Delegated to a more senior position.</p>	<p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.</p> <p><input type="checkbox"/> Issuance of RFPs/REOs.</p> <p><input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.</p> <p>Delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.</p> <p><input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$1 Million.</p> <p><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.</p> <p>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$1 Million.</p> <p><input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (u)).</p> <p><input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences</p> <p><input type="checkbox"/> (b) Releases/Discharges</p> <p><input type="checkbox"/> (c) Surrenders/Abandonments</p> <p><input type="checkbox"/> (d) Enforcements/Terminations</p> <p><input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppels/Certificates</p> <p><input type="checkbox"/> (f) Objections/Waivers/Caution</p> <p><input type="checkbox"/> (g) Notices of Lease and Sublease</p> <p><input type="checkbox"/> (h) Consent to regulatory applications by City, as owner</p> <p><input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title</p> <p><input type="checkbox"/> (j) Documentation relating to Land Titles applications</p> <p><input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds</p>
<p>B. Director, Real Estate Services and Manager, Real Estate Services each has signing authority on behalf of the City for:</p>		
<ul style="list-style-type: none"> • 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, Transaction Services is only Manager with such signing authority). 		
<p>Director, Real Estate Services also has signing authority on behalf of the City for:</p>		
<ul style="list-style-type: none"> • 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, Corporate Services and any related documents. 		

Consultation with Councillor(s)									
Councillor:	Mike Layton (Dec 4 2019)				Councillor:	Kristyn Wong-Tam (Dec 4 2019)			
Contact Name:					Contact Name:				
Contacted by:	Phone	<input checked="" type="checkbox"/>	E-Mail		Memo		Other		
Comments:	No Objection				Comments:	No Objection			
Consultation with Divisions and/or Agencies									
Division:	Parks, Forestry & Recreation				Division:	Financial Planning			
Contact Name:	Christina Iacovino / Doug Bennet (Aug 22 2019)				Contact Name:	Filisha Jenkins (Dec 4 2019)			
Comments:	Proceed With Agreement				Comments:	Comments Incorporated			
Legal Division Contact									
Contact Name:	Lisa Strucken (Aug 22 2019)								

DAF Tracking No.: 2019-347	Date	Signature
Concurred with by: Manager, Real Estate Services		
<input checked="" type="checkbox"/> Recommended by: Acting Manager, Real Estate Services Melanie Hale-Carter	Dec. 12, 2019	Signed by Melanie Hale-Carter
<input type="checkbox"/> Approved by:		
<input checked="" type="checkbox"/> Approved by: Acting Manager, Real Estate Services Daran Somas	Dec. 12, 2019	Signed by Daran Somas

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, 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").

Major Terms & Conditions

Landlord:	City of Toronto
Tenant:	Evergreen
Licensed Premises:	Various Locations – See Appendix "A"
Term:	Five (5) years, commencing October 1, 2019 and expiring September 30, 2024
Licence Fee:	\$7,500.00 per annum (plus HST) \$37,500.00 net total over five (5) year term

Boundaries: The boundaries of the Licensed Areas and/or the Carrying Capacities of those areas may change at any time, at the discretion of the City's General Manager of Parks, Forestry and Recreation or her designate (the "General Manager"), acting reasonably, due to factors including but not limited to erosion, overuse, construction or other factors. The General Manager shall advise the Licensee of any such changes by notice in writing.

The Licensee acknowledges and agrees that it does not have the right to use any land owned by the City or the TRCA beyond the boundary of the Licensed Areas. The Licensee shall use only the main trails making up the Licensed Areas and shall not use any smaller informal trails.

Early Termination: Either the City or the Licensee may terminate this Agreement at any time and for any reason whatsoever upon providing to the other party at least 60 days' advance notice in writing (the "Termination Notice").

Security Deposit: The Licensee shall provide to the City an irrevocable and unconditional security deposit in the amount of Five Thousand Dollars (\$5,000.00) (the "Security Deposit") by certified cheque, to be held by the City as security for any damage to the Licensed Areas caused by the Licensee, its program participants or anyone else for whom the Licensee is at law responsible.

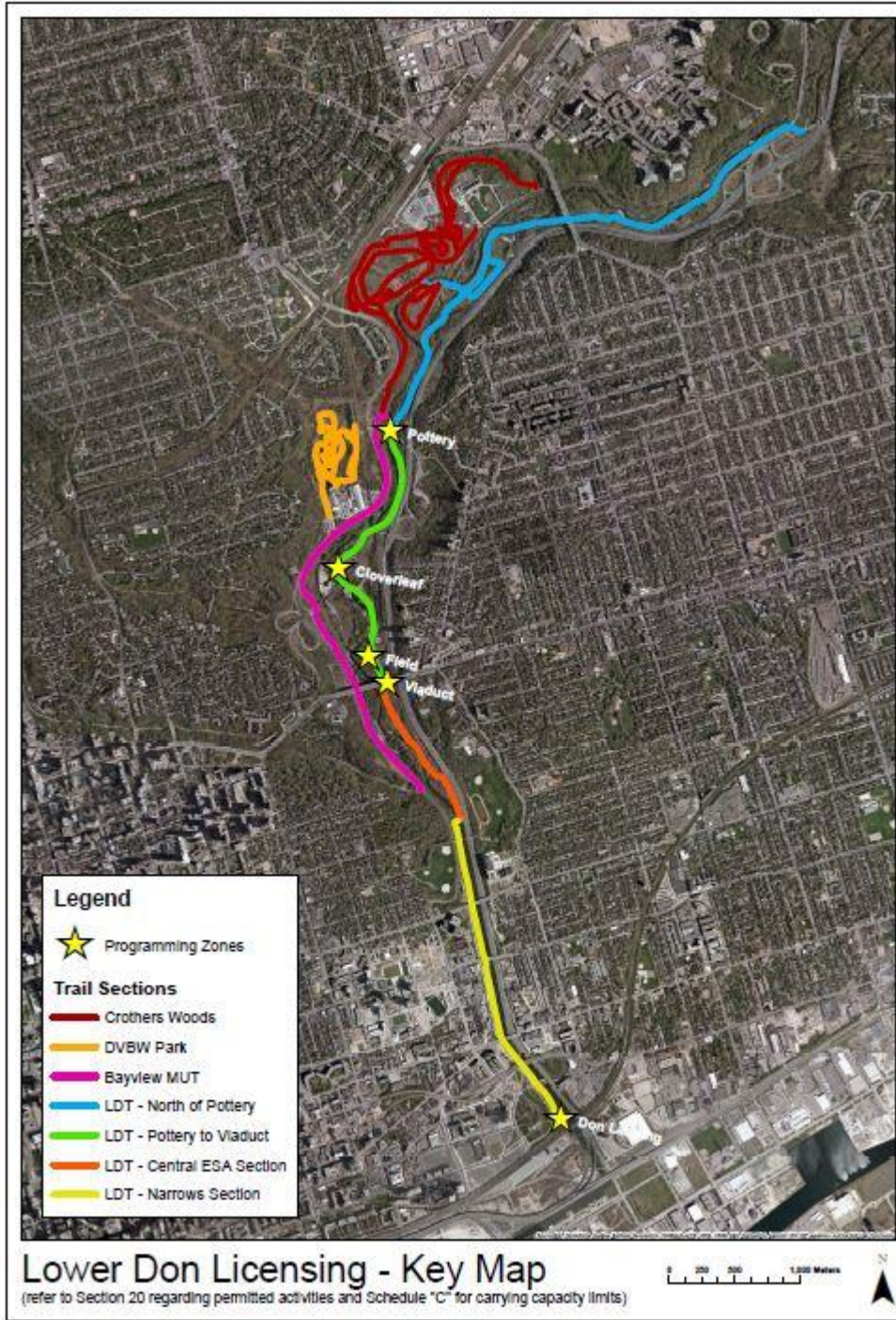
Programming: All proposed programming must be submitted semi-annually by Evergreen for pre-approval by the General Manager, in a form approved by the General Manager, on or before October 1 for the winter/spring schedule and April 1 for the summer/fall schedule. All proposed programming submitted for review by the General Manager shall conform to the Carrying Capacities as detailed in Schedule C, which is subject to change.

The number of persons accessing the Licensed Areas shall be limited in accordance with the "Carrying Capacities" attached as Schedule C.

Temporary Art: Temporary Art will only be permitted in the Licensed Areas depicted in Schedules "A" and "B" and not anywhere outside the Licensed Areas.

Insurance: The Licensee shall, at all times during the Term of this Agreement, maintain or cause to be maintained Commercial General Liability insurance in the amount of Five Million Dollars (\$5,000,000) on a per occurrence basis, including personal injury, employer's and contingent employer's liability, blanket contractual liability, provisions for cross liability and severability of interests and non-owned automobile liability insurance.

Appendix "A" Lower Don Licensing Key Map



Programming Zones

