



STAFF REPORT ACTION REQUIRED

Part of 70 Birmingham Street – Amendments to the Proposed Long-Term Lease

Date:	March 26, 2007
To:	Government Management Committee
From:	Chief Corporate Officer
Ward:	6 – Etobicoke-Lakeshore
Reference Number:	P:\2007\Internal Services\F&re\Gm07027F&re – (AFS 4136)

SUMMARY

The purpose of this report is to seek authority to revise certain terms of a proposed lease with Her Majesty the Queen in Right of Canada as represented by the Minister of National Defence (“DND”) which had been approved by Council at its meeting on July 25, 26 and 27, 2006 by its adoption of Clause No. 20 of Report No. 5 of the Administration Committee. This proposed lease is for the purpose of providing DND with an exclusive area together with shared use of the facilities at the Toronto Police Services training facility to be constructed at 70 Birmingham, City of Toronto.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

Council authorize the proposed long-term lease (the “Lease”) with Her Majesty the Queen in Right of Canada as represented by the Minister of National Defence (“DND”) substantially on the terms and conditions, as set out in Amended Appendix “A” attached, and on such other terms and conditions as may be approved by the Chief Corporate Officer, in consultation with the Chief of Police and in a form acceptable to the City Solicitor.

FINANCIAL IMPACT

The earlier Council approved terms and conditions of the proposed lease with DND regarding the total payment amount and schedule have not changed.

This lease will generate a revenue in the amount of approximately \$9,831,685.00. The sum will be paid by DND, in three instalments, during the construction of the TPS training facility and will be transferred to the TPS New Training Facility Capital Project Account No. PL-100021-02 to pay for the costs attributable to the additional space required to accommodate DND at the new TPS training facility. During the term of the lease, DND shall be responsible for its proportionate share of taxes and operating costs of the training facility.

The New Training Facility Capital Project at this site has been approved by the Toronto Police Service Board and City Council. The estimated capital expenditure is included in the TPS 2007-2011 Capital Program.

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

DECISION HISTORY

By the adoption of Clause No. 15 of Report No. 2 of the Administration Committee, City Council on April 25, 26 and 27, 2006 declared a portion of the property municipally known as 70 Birmingham Street, including the Leased Premises, surplus to municipal requirements with the intended method of disposal to be by way of a long term lease to DND.

By the adoption of Clause No. 20 of Report No. 5 of the Administration Committee entitled "Long-Term Lease to Her Majesty the Queen in Right of Canada as Represented by the Minister of National Defence – Part of 70 Birmingham Street", City Council, at its meeting on July 25, 26 and 27, 2006, authorized a long term lease with DND for a twenty (20) year term with an option to renew for a further term of twenty (20) years. The Lease proposal was also conditional on approval of the terms and conditions by both City Council and Treasury Board.

ISSUE BACKGROUND

After Council had granted its authority, staff were advised that DND would not be able to obtain the necessary approval of Treasury Board if the lease were to be a twenty (20) year term with an option to renew for a further twenty (20) year term at market rent.

DND staff have requested that the term of the lease be amended to a forty (40) year term with no option to renew. During the forty (40) year term, DND would be responsible for its proportionate share of structural and capital expenditures.

Recent discussions with DND staff indicate that it will likely be summer 2007 before approval from Treasury Board can be granted.

COMMENTS

Subject to the approval of Council and the Federal Treasury Board, City staff have negotiated the following revisions which now form part of Amended Appendix “A” attached:

1. Lease Term - changed from twenty (20) years to forty (40) years with no option to renew;
2. Additional Rents – amendments made to clarify that DND to be responsible for its own leasehold improvements and its proportionate share of maintenance, repair and replacement of any and all parts of the building components or building systems;
3. Management Committee –additional provision requiring the City/TPS and DND to form a Management Committee for the purpose of approving annual budgets for operation and maintenance of common and shared use facilities and to ensure effective communication between the parties; and
4. Approvals - reference to the time limits are now deleted.

The revised terms and conditions of the proposed Lease are set out in Amended Appendix “A” attached to this report. The terms and conditions of the Lease are considered fair and reasonable.

This report has been prepared in consultation with staff of Toronto Police Services and Legal Services.

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SIGNATURE

Bruce Bowes, P. Eng.
Chief Corporate Officer

ATTACHMENTS

Appendix A
Appendix B – Location & Site Map

Staff report for action respecting the Long-term Lease of Part of 70 Birmingham Street

Amended Appendix "A"
Major Terms and Conditions
Lease to Her Majesty the Queen in right of Canada
as represented by the Minister of National Defence ("DND")
Part of 70 Birmingham Street

1. **Leased Premises:**
Portions of the land and building to be completed by the Toronto Police Service ("Police") exclusively for the use of DND (the "Tenant") at the property municipally known as 70 Birmingham Street, City of Toronto. For identification purpose, such land and building is shown delineated in dark bold line on the attached Appendix "B".
2. **Lease Term:**
The term of the Lease shall be for a period of forty (40) years commencing on the date the building fit for occupancy or the execution of the Lease Agreement whichever is the later, provided that the Tenant shall not take occupancy of the Leased Premises prior to the execution of the Lease. The substantial completion shall be determined by Police's architect in accordance with the industry standard.
3. **Basic Rent:**
 - (I) The Basic Rent shall include and be calculated as follows, subject to adjustment in clause (3) (II):
 - a. An amount equivalent to all the construction costs for the building and outside facilities attributable to the Tenant's Exclusive Use Land and Building Area
 - b. Tenant's proportionate share of design, construction management and Permits/Licenses fees.
 - c. Tenant's Exclusive Use Land Area
 - d. Payment of Shared Use Facility

The total payment shall be in the amount of \$9,831,685.00 plus Goods and Services Tax ("Estimated Basic Rent") payable in three instalments. The first instalment will be due at the start of the construction as established and advised by the Police/City. The first instalment shall be an amount equal to 50 percent of the total Estimated Basic Rent. The second instalment will be due 10 months after the start of the construction and will be equal to 25 percent of the Estimated Basic Rent. The third instalment will be the remaining of the Estimated Basic Rent due upon substantial completion as determined by the Police's architect. The Landlord shall hold the first two instalments of Basic Rent in trust for the Tenant during the construction phase of the project and shall be paid out based on the contractor's applications for payment as the work progresses.

(II) Basic Rent Adjustments:

- a. In the event the overall construction cost is increased beyond \$232 per square foot, including but not limited to the increased cost to achieve certified LEED Silver standard and any changes to the Tenant's exclusive area and common facilities, the increased Basic Rent will be calculated as follows

$$\text{Payment} = (A - B) \times C$$

Defined:

A = the final construction cost per square foot as calculated by Police's architect

B = \$232 per square foot of GFA

C = 36,109 square feet

- b. In the event the final GFA of the Tenant Building Area is larger than that of the Conceptual Drawing dated February 2, 2006, the Basic Rent will be adjusted as follows:

Increase in square footage X the final construction cost per square foot as calculated by Police's architect

- c. In the event the square footage of Tenant Building Area is more than 12.15 percent of the total square footage of the building(s) on the site, the Tenant's share of the Design, Construction Management and Permits/licenses fees shall be increased accordingly.
- d. The Tenant shall be responsible for its proportionate share of any increases in Design, Construction Management and Permit/Licenses fees
- e. The Tenant shall be solely responsible for any increases of costs specifically for the Tenant's exclusive area.

All of the above shall be paid by the Tenant to the Landlord together with the last instalment or upon demand. In any event, the total payment shall not be less than \$9,831,685.00 plus Goods and Services Tax and shall not exceed a maximum amount of \$12,000,000.00 plus Goods and Services Tax. The Tenant agrees not to request any changes in the design specifications which would result in an increase of the Basic Rent Adjustment attributable to the Tenant in excess of \$2,168,315.00, as determined by the Police.

4. Additional Rents:

The Lease shall be a net lease to the Landlord. All taxes, taxes in lieu, permit fees, utilities, cost of leasehold improvements and fixtures, including maintenance, repair and replacement thereof, and any other expenses whatsoever related to the Tenant's occupancy and use of the Tenant's Exclusive Use Land and Building Area, save

and except expenses which relate to the structure, electrical, mechanical and HVAC components of the building shall be the sole responsibility of the Tenant.

The Tenant shall also be responsible for its proportionate share of the costs which is the ratio of the Tenant's Exclusive Use Building Area to the gross floor area of the building of:

- a. all taxes and proportionate share of operating costs for the Common and Shared Use Facilities areas; and
- b. maintenance, repair and/or replacement of any and all building components and building systems servicing the entire or any part of the building including but not limited to electrical, mechanical and HVAC systems.

For the purposes of this paragraph (5) the term "building" shall mean the aggregate of the Police Building Area, the Tenant Building Area, the Shared Use Facilities Area and the Common Area.

All taxes and operating costs payable by the Tenant may be estimated by the Landlord on an annual basis, and the Tenant agrees to pay to the Landlord such estimated amounts in monthly installments in advance during such period as Additional Rent, subject to adjustment when actual invoices are available.

5. Management Committee

The Landlord and Tenant shall form a Management Committee which shall consist of two Tenant representatives and three landlord representatives which shall meet as required by mutual consent but no less than twice a year. The major responsibilities of the Management Committee shall be the approval of annual budget for operating, maintenance and repair of Common and Shared Use Facilities, effective communication between the Landlord and Tenant regarding construction and maintenance issues and initial portion of escalation with respect to dispute resolution.

6. Shared Use Facilities:

Shared Use Facilities shall be the facilities, such as two classrooms, one small gymnasium and the cafeteria dining area in the building designated by the Police upon the completion of the final architectural and site plans.

The Landlord acknowledges that the required use by the Tenant is 2 nights a week and 2 weekends a month for the months of September to May inclusive. The final scheduling is to be mutually agreed in writing on an annual basis between the Police and the Tenant, acting reasonably.

7. Common and Shared Use Facilities Area:

The Tenant acknowledges and agrees that the Common and Shared Use Facilities Areas do not form part of the Leased Premises and the Police shall have full control

of these areas. The Tenant shall comply with any rules and regulation the Landlord and/or the Police may, at its sole option, set from time to time, acting reasonably.

8. Use:

The Tenant acknowledges and agrees that:

- (i) the Leased Premises is to be used during the Term for the purpose of maintaining and operating a training and operations facility for the Tenant;
- (ii) no vehicles that are used for carrying petroleum products or waste materials are to be stored on the Leased Premises;
- (iii) no derelict vehicles are to be stored on the Leased Premises;
- (iv) the Leased Premises will not be used for the storage of any materials not directly related to, or currently required, for the safe and efficient operation of the facility; and
- (v) the Tenant may obtain a liquor licence, at its own expense, for the mess area within Tenant Building area only.

9. Additional Parking:

The Landlord agrees that the Tenant shall be allowed to use, in addition to its parking area within the Tenant's Exclusive Land Area, an additional 60 parking spaces in an area designated by the Police. A schedule for the use of the additional 60 parking spaces shall be approved by the Police and shall coincide with the Tenant's use of the Shared Use Facilities.

10. Maintenance and Repair:

The Police shall be responsible for the maintenance of the Tenant's Exclusive Land and Building Areas, all building systems serving the entire building and any common areas, which shall be maintained to the Public Works and Government Services Leased Accommodation Standards. The cost of such maintenance will be proportionately shared by the Tenant as Additional Rent.

11. Liability:

- a. Subject to the Crown Liability and Proceedings Act, the Tenant shall, at all times, indemnify and save harmless the Landlord and the Police from and against any and all manner of actions, claims, charges, costs, damages, demands, expenses, losses and any other proceedings whatsoever (including but not limited to those under or in connection with the Worker's Compensation Act or any successor legislation) made or brought against, suffered by or imposed on the Landlord and the Police or its property in respect of any loss, damage or injury (including fatal injury) to any person or property (including without restriction, employees, agents, contractors and property of the Landlord and the Police or of the Tenant) arising out of, resulting from or sustained as a

result of the Tenant's occupancy or use of the Leased Premises or any operation or work or any fixtures or chattels thereon.

- b. Subject to the Crown Liability and Proceedings Act, the Tenant shall, at all times, indemnify and save harmless the Landlord and the Police from and against any and all manner of actions, claims, charges, costs, damages, demands, expenses, losses and other proceedings whatsoever (including but not limited to those under or in connection with the Construction Lien Act or any successor legislation) in connection with any work done for the Tenant at or on the Leased Premises and shall promptly see to the removal from the registered title to the Leased Premises of every claim for lien and/or certificate of action having to do with such work or supply of services and/or materials for such work.
 - c. The Tenant hereby releases, waives and forever discharges the Landlord and the Police and their officers, agents, servants, contractors, representatives, employees, elected and appointed officials, successors and assigns of and from all claims, demands, damages, costs, expenses, actions and causes of actions, whether in law or equity, in respect of death, injury, loss or damage to the person or any property of the Tenant or others howsoever caused, arising or to arise by reason the permission granted pursuant to this agreement, or any of the terms and conditions hereof, save and except claims arising from the Landlord's negligent actions or omissions.
 - d. The Landlord shall, at all times, indemnify and save harmless the Tenant from and against any and all manner of actions, claims, charges, costs, damages, demands, expenses, losses and any other proceedings whatsoever (including but not limited to those under or in connection with the Worker's Compensation Act or any successor legislation) made or brought against, suffered by or imposed on the Tenant (including without restriction, employees, agents, contractors) and property of the Tenant arising out of, resulting from or sustained as a result of the Landlord's operations.
12. Leasehold Improvements:
- a. The Tenant shall accept the Leased Premises on an "as is" condition existing at the commencement of the Lease Term. The Tenant shall satisfy itself, at its sole expense, that the Tenant's intended use of the Leased Premises complies with all current applicable laws, by-laws, building codes, fire codes and all other applicable rules and regulations.
 - b. During the term of the lease or any renewal thereof, the Tenant, at its sole expense, shall be responsible for compliance with all current applicable laws, by-laws, rules, building code(s) and regulations and shall obtain all necessary permits and licenses that may be required for the use of the Leased Premises and shall save the Landlord and the Police harmless from any liability or cost suffered by the Tenant or the Landlord and the Police as a result of the

Tenant's failure to so comply. At the request of the Landlord and/or the Police, the Tenant shall be required to submit proof of such compliances. More specifically, the Tenant shall not commence work/construction or operation without receipt of permits, licenses or approvals from proper authorities.

- c. The Tenant shall provide, prior to commencement of any work on the Leased Area, detailed plans and specifications of all installations and/or construction on the Leased Area for approval by the Chief Corporate Officer (the "CCO"), in consultation with the Police. Any deviation or modification from the plans and specifications approved by the CCO must be submitted for further approval. The Tenant acknowledges that it is solely responsible for the design, construction and maintenance of all aspects of the works and agrees that no review or approval by any Department of the City of such plans and specifications shall in any way derogate from or diminish the Tenant's rights or the Tenant's obligations under this proposal.
 - d. The Tenant shall not enter into any contracts for work, construction or services in relation to the Leased Premises which may give rise to a lien or claim for lien under Construction Lien Act or successor legislation, without the prior consent of the CCO, in consultation with the Police, which consent shall not be unreasonably withheld or delayed.
 - e. Upon expiry of the Lease or any renewal thereof, all leasehold improvements and fixtures shall become the property of the Landlord and, notwithstanding the foregoing, at the sole discretion of the Landlord, the Tenant shall, at its expense, remove such Tenant's improvements, fixture(s), equipment, and debris as the Landlord may require with all damages repaired to the satisfaction of the CCO.
13. Hazardous Material:
The Tenant shall not be permitted to store or use any hazardous materials except in federally approved storage containers which are in compliance with all federal, provincial and municipal laws, by-laws and regulations, or conduct any act which may cause soil contamination.
14. Assignment or Sublease:
The Lease shall not be assigned or subleased (including a leasehold mortgage) without the prior written consent of the Landlord, which may be arbitrarily and unreasonably withheld in all cases.
15. Approvals
Entering into the Lease is conditional upon the following:
- a. approval of the terms and conditions of the proposed Lease by City Council;

- b. approval of the terms and conditions of the proposed Lease by Treasury Board;
- c. approval of the terms and conditions of the proposed Lease by Police Services Board, if necessary; and
- d. Toronto Police Service and the Tenant have agreed on all matters related to the construction of the joint facilities and the scheduling of the Shared Use area.

Appendix "B"
Location and Site Map

