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**City Council**

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**MOTION WITHOUT NOTICE**

MM31.7	ACTION			Ward: 6
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**70 Birmingham Street – Amendment to Lease with Her Majesty the Queen in Right of Canada as Represented by the Minister of National Defence - Councillor McConnell, seconded by Councillor Carroll**

*•This Motion has been deemed urgent by the Chair. Council has added this Motion to the agenda for debate.*

**Recommendations**

Councillor McConnell, seconded by Councillor Carroll, recommends:

1. That City Council authorize amendment to the provisions of the Lease with Her Majesty the Queen in Right of Canada as represented by the Minister of National Defence (“DND”) on terms and conditions satisfactory to the Chief Corporate Officer, in consultation with the Chief of Police and in a form acceptable to the City Solicitor.
2. That City staff be authorized and directed to take the necessary steps to give effect thereto.

**Summary**

The property municipally known as 70 Birmingham Street is the site of a new Police Training Facility which is currently under construction. Once construction has been completed, the Department of National Defence (“DND”) will share a portion of the Facility with Toronto Police Service (“TPS”) and will also have an area for its exclusive use (the “Leased Premises”). For this purpose, the City has entered into a long-term Lease with DND which provides for the funding of the design and construction of the Leased Premises and shared use areas by way of an up-front payment of Basic Rent.

The Lease provides that the minimum amount of Basic Rent to be paid to the City is the sum of \$9,831,685 and the maximum amount is the sum of \$12,000,000. When the Lease was signed by the parties, DND provided the City with the full amount of \$12,000,000 which is held in trust and utilized for payment of DND’s share of construction costs. The Lease further provides that if construction costs exceed the sum of \$232.00 per square foot, a Basic Rent adjustment would occur enabling the City to be paid Basic Rent in excess of the minimum amount. Any monies not utilized by the City for DND obligations under the Lease will be returned to the Federal Government.

As construction of the Facility has progressed, there have been a number of change orders submitted by DND to TPS which were not reasonably contemplated in the original design of the Facility but have been implemented by TPS. Additionally, DND wishes TPS to install in the Leased Premises additional changes including cable equipment and furnishings which were not clearly provided for as items to be included in the cost of Basic Rent.

Despite the fact that construction costs for the Facility have not exceeded the sum of \$232.00 per square foot, DND advised, on February 20, 2009, that it is willing to enter into an amendment to the Lease to provide that costs incurred by the City/TPS to implement change orders (past and future) as well as the costs of cable equipment and furnishings will be deemed additions to Basic Rent so that those costs incurred will be paid in addition to and in excess of the minimum amount of Basic Rent.

The proposed amendment will permit the City to complete DND's facility and accommodation requirements and will authorize the City to completely recover the costs for all DND-related changes and requests, whereas the current wording of the Lease would restrict this from occurring.

It is urgent that the Lease be amended as soon as possible to enable TPS to include the additional items of cable equipment and furnishings within a current tender which will provide a pricing advantage for both DND and TPS and will allow TPS to maintain the current construction schedule, which is nearing substantial completion.

(Submitted to City Council on February 23 and 24, 2009 as MM31.7)