

## **Lease Amending Agreement at 2489 Bayview Avenue**

<b>Date:</b>	March 30, 2010
<b>To:</b>	City Council
<b>From:</b>	Chief Corporate Officer and General Manager, Economic Development & Culture
<b>Wards:</b>	Ward 25 - Don Valley West
<b>Reference Number:</b>	P:\2010\Internal Services\RE\Cc10027re - (AFS #11881)

### **SUMMARY**

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The purpose of this report is to obtain City Council authority to amend the existing lease with the City's tenant, the Canadian Film Centre ("CFC"), located at 2489 Bayview Avenue. This report also requests authority to advance funding to the City's tenant that has been secured through various sources.

### **RECOMMENDATIONS**

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**The Chief Corporate Officer and the General Manager, Economic Development & Culture recommend that:**

1. City Council grant authority to amend the City's Lease dated November 1, 1987 with the Canadian Film Centre ("CFC"), to provide for an expanded area and allow for capital improvements, substantially in accordance with the terms and conditions outlined in Appendix "A", and such other terms and conditions as deemed appropriate by the Chief Corporate Officer and in a form satisfactory to the City Solicitor.
2. City Council authorize the Chief Corporate Officer ("CCO") to administer and manage the amended Lease, including the provision of any consents, approvals, notices and notices of termination, provided that the CCO may, at any time, refer consideration of such respective matters (including their content) to City Council

for its determination and direction. Such authority of the CCO shall include the City's right, as Landlord to consent to modifications, including new construction and additions, as well as the City's right to authorize the Tenant to make Planning Act applications for any modifications which may have been or may be approved by the CCO pursuant to the lease.

3. City Council grant authority to accept from the Province of Ontario and the Government of Canada financial assistance for the premises leased to the CFC at 2489 Bayview Avenue upon the terms and conditions contained within the "Infrastructure Stimulus Fund Contribution Agreement" (File 14923) and to enter into such Agreement with the Province of Ontario;
4. City Council grant authority to the Executive Director, Cultural Services to administer the release of the following payments to the CFC:
  - (a) the City's capital funding of \$1 Million (approved in the 2009 Capital Budget) towards the costs of the state of good repair projects; and
  - (b) the federal-provincial Infrastructure Stimulus Funds received by the City for the premises leased to the CFC.
5. City Council direct the Director, Real Estate Services Division and the Executive Director, Cultural Services to:
  - (a) negotiate with the CFC proposed capital improvements and any further required amendments to the Lease;
  - (b) seek consent and any other approvals required of the beneficial owners of the restrictive covenants on the property; and,
  - (c) report back to Government Management Committee if further direction is required.

## **Financial Impact**

The \$6.501 million Winfields Restoration Project includes \$2.0 million previously approved project costs from the 2009 Capital Budget for Economic Development and Culture and \$4.501 million in additional ISF project costs approved in 2010.

Canadian Film Centre previously received Council approval for \$2.0 million of capital work under the Winfields Restoration Project, including \$1.0 Million in City funding and \$1.0 million in CFC fundraising. The cost of the \$1 million capital funding to be

advanced by the City to the CFC, in accordance with the terms in this report, towards the CFC's costs of state of good repair projects to the buildings at Windfields Park leased by the CFC from the City, was included in the Capital Budget for 2009 and the CFC is also required to fund a matching amount for such costs.

The additional ISF project cost of \$4.501 million is funded by \$3.250 million Federal funding and \$0.750 million Provincial funding for a total ISF Program funding in the amount of \$4.0 million and a \$0.501 million contribution from "other sources" or fund raising. No incremental increase in City funding is required. The total ISF funding of \$4.0 million including \$3.250 million dollars in Federal and \$0.750 million Provincial Infrastructure Stimulus Funds will be paid to the City and advanced to the CFC in accordance with the Infrastructure Stimulus Fund Agreement and the terms recommended in this Report.

The \$6.501 million Windfields Restoration project includes \$4.0 ISF Funding, \$1.0 million City Funding and \$1.501 million third part funding from the Canadian Film Centre.

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

## **DECISION HISTORY**

In 1969, the former City of North York accepted from E.P. Taylor's company the donation of his 50 acre "Windfields Farm", including its historic main house, related staff houses and a gate house located at the property municipally known as 2489 Bayview Avenue.

In 1987, the City leased a 4.36 acre portion of this Farm, comprised of its historic buildings and associated lands, to the "Canadian Centre for Advanced Film Studies", at an annual rent of \$2.00 per year plus operating costs, including realty taxes and utilities, for an initial term of 19 years, with an option to renew for another 19 years.

In 1991 the Tenant changed its corporate name to the "Canadian Film Centre" ("CFC"). In 2006 when the original 19 year term expired, the CFC exercised its option to renew this Lease for an additional 19 year term, ending on October 31, 2025.

In May of 2008, the CFC appeared as a delegation before the Economic Development Committee to outline its plans to carry out state of good repair projects to the buildings leased from the City and to request the City's financial contribution towards the costs of

its proposed projects. On December 10, 2008, in adopting Item IX 14-21 of the EDCT Cultural Services Capital Budget, Council authorized \$1 Million dollars of funding toward the state of good repair projects to the leased premises provided that the CFC matched such funding with another one million dollars for such projects.

In 2009, the City of Toronto (on behalf of the CFC) was successful in obtaining Federal and Provincial Infrastructure Stimulus Funds for the improvement of the City-owned facilities located at 2489 Bayview Avenue leased to the CFC.

Earlier this month, the City obtained authority to enter into a new licence agreement with CFC to allow their organization to perform soil tests on the proposed lease expansion area to determine if the site was suitable to house the newly proposed geothermal HVAC system. Authority to enter into the licence agreement was obtained through DAF #2010-012.

## **ISSUE BACKGROUND**

The CFC has now prepared its plans for the state of good repair projects to the buildings leased from the City. Council has already budgeted for the City's \$1 Million share of such costs. It is now appropriate to obtain Council authorization for the terms upon which the City's \$1 Million in budgeted funds and the Infrastructure Stimulus Fund Contribution shall be advanced and related adjustments to the Lease with the CFC to facilitate the state of good repair projects.

## **COMMENTS**

In 1987 the former City of North York leased the historic buildings located at 2489 Bayview Avenue to the CFC. At that time, CFC was a new organization facing uncertain funding issues. Consequently, this particular lease did not require CFC to assume responsibility for structural repairs/replacements, HVAC costs and further, that if CFC did not agree to assume capital costs, the Lease could be terminated.

After more than twenty years of operation, the CFC has become a successful creative arts and media organization, collecting annual revenues, and with financial support from federal and provincial governments as well as the City. The CFC is now proposing \$2 Million in state of good repair projects to the existing buildings leased from the City.

Utilizing these funds, CFC is proposing to replace the existing aged HVAC system contained within the existing premises with a geothermal HVAC system. In order to successfully install the revised system, research must be conducted at the site to determine the soil's suitability to house the required network. CFC also plans on renovating the existing basement of the main building to house a mechanical room that will operate the new HVAC system once it is made operational.

It is proposed that the existing lease between both parties be adjusted dealing with items such as: (1) the tenant's obligation to repair, to recognize the CFC's role as the tenant of the historic buildings leased from the City; (2) the City's approvals as Landlord to the Tenant's state of good repair projects, including HVAC and related work now to be carried out by the CFC; and (3) Lease termination rights (the Tenant's right in the Lease to terminate this Lease on thirty days' notice would be removed as it is no longer appropriate). Further, the repair and alteration clauses of this Lease would be revised to make the CFC responsible for maintenance, replacements and repairs to the leased premises from now on.

The premises leased to the CFC are also, in part, designated by By-law as a cultural heritage resource and amendments to the Lease are also proposed to incorporate the City's heritage conservation standards and requirements, including a heritage easement to be granted by CFC to the City. A stage 1-2 archaeological assessment of the leased premises has been carried out by the City because the leased premises are within an area of archaeological potential. Before the CFC's work commences, the City will ensure that the findings of this assessment are incorporated into the subject work.

Winfields Park was donated subject to specific restrictions on the uses that the City (and by extension, the CFC), could make of this property. These restrictions were registered directly on title and were made for the benefit of particular residential properties located on the adjacent street (Country Lane). The restrictive covenants provide that unless the beneficiaries agree to modify them and/or agree to issue consents pursuant to them, the projects and proposed uses by the CFC may be prohibited. Therefore, where required, the City will seek the consent of the covenant holders.

### **Canadian Film Centre Additional Proposal**

On March 24<sup>th</sup> 2010, the City's Real Estate Services Division received a formal request from the CFC to expand the leased premises in 3 additional areas (in addition to the current expansion area that is the subject of this report). The CFC proposes to renovate existing buildings and construct or expand additional facilities as part of this proposal.

City staff are reviewing the recent proposal submitted by the CFC which will also require the consent of the holders of the existing restrictive covenants. Should the City's review and discussions with the restrictive covenant holders prove successful, staff will seek further approvals from City Council.

The funding provided by the Federal and Provincial governments is contingent on the CFC's ability to carry out the work by March of 2011. The CFC also requires municipal approvals to commence construction. All proposed renovations to the leased premises will protect and maintain the important heritage qualities of the property while accommodating the growth and the active use of the existing buildings.

## **CONTACT**

Joe Casali  
Director, Real Estate Services  
Tel: (416) 392-7202  
Fax: (416) 392-1880  
[jcasali@toronto.ca](mailto:jcasali@toronto.ca)

Rita Davies  
Executive Director, Cultural Services  
Economic Development & Culture  
Tel: (416) 397-5323  
Fax: (416) 392-5600  
[rdavies@toronto.ca](mailto:rdavies@toronto.ca)

Doug McDonald  
Manager, Business Services  
Parks, Forestry & Recreation  
Tel: (416) 392-8578  
Fax: (416) 392-3355  
[dmcdona0@toronto.ca](mailto:dmcdona0@toronto.ca)

## **SIGNATURE**

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Bruce Bowes, P. Eng.  
Chief Corporate Officer

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Michael H. Williams  
General Manager  
Economic Development & Culture

## **ATTACHMENTS:**

Appendix "A" – Amendments to the Lease with CFC  
Appendix "B" – Map Illustrating the Leased Premises