

## **Lease Agreement with Ireland Park Foundation at 5 Eireann Quay - Portion of Administration Building**

**Date:** June 12, 2018

**To:** City Council

**From:** Deputy City Manager, Internal Corporate Services  
Chief Planner and Executive Director, City Planning  
General Manager, Economic Development and Culture

**Wards:** Ward 20 - Trinity-Spadina

### **SUMMARY**

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Pursuant to the June 5, 2018 Government Management Committee meeting (GM28.32), the purpose of this report is to obtain City Council authority to enter into a short term nominal sum lease with Ireland Park Foundation for a portion of the Administration Building located at 5 Eireann Quay.

The short term nominal sum lease shall permit and obligate Ireland Park Foundation to carry out basic leasehold improvements, and to use and continually operate a portion of the Administration Building as a Cultural and Interpretive Centre that will support public commemorative space to tell the stories of Irish famine immigrants and their families to Canada, accommodate cultural events to celebrate the historical relationship between Canada and Ireland, host fundraising events, and to carry on such other activities consistent with the articles of Ireland Park Foundation, making the Bathurst Quay Neighbourhood an arts and heritage destination.

### **RECOMMENDATIONS**

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The Deputy City Manager, Internal Corporate Services, the General Manager of Economic Development and Culture, and the Chief Planner and Executive Director, City Planning recommends that:

1. City Council authorize the City, as landlord to enter into a nominal sum lease (the "Lease") with Ireland Park Foundation, as tenant for a portion of the Administration Building located at 5 Eireann Quay for a five (5) year term substantially on the terms and conditions set out in the attached Appendix "A", together with such other terms and conditions as may be deemed appropriate by the Deputy City Manager, Internal

Corporate Services (the "DCM") in consultation with the General Manager, Economic Development and Culture (the "GM"), Chief Planner and Executive Director, City Planning and in a form acceptable to the City Solicitor.

2. City Council authorize the DCM, in consultation with the GM and Chief Planner and Executive Director, City Planning, to negotiate the Lease, including any amendments to the Lease, not materially inconsistent with the major terms and conditions set out in the attached Appendix "A" and in a form acceptable to the City Solicitor.

3. City Council authorize each of the DCM and the Director of Real Estate Services severally to execute and deliver the Lease, any amendments to the Lease, and any related documents contemplated thereunder on behalf of the City.

4. City Council authorize the DCM or his/her successor/designate to administer and manage the Lease and any amendments to the Lease, including the provision of any consents, approvals, waivers, notices and notices of termination, provided that the DCM may, at any time, refer consideration of such matters to City Council for its determination and direction.

5. City Council waive the application of the Community Space Tenancy Policy (CST Policy) in respect of the Lease transaction including the requirements outlined in the Request for Expressions of Interest in the CST Policy and declare that it is in the interest of the City to grant the Lease to Ireland Park Foundation for nominal consideration.

6. City Council direct that prior to the City entering into the Lease, Ireland Park Foundation shall deliver to the City a legal opinion in respect of the corporate status, powers and authority of the Tenant to enter into and perform the obligations under the Lease, and the due authorization, execution and delivery of the Lease by the Tenant, in form and content satisfactory to the City Solicitor.

7. City Council authorize the City Solicitor to complete the Lease transaction on behalf of the City, including amending the commencement date of the Lease and other dates, and amending terms and conditions, on such terms as the City Solicitor deems advisable.

## **FINANCIAL IMPACT**

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The Lease is for nominal rent.

In accordance with the terms of the Lease, the tenant, Ireland Park Foundation ("IPF") will be responsible for all realty taxes and operating costs related to their portion of the Leased Premises, approximately 6,000.00 - 7,500.00 square feet (the "Leased Premises") (to be determined by the Landlord) of the Administration Building located on lands municipally known as 5 Eireann Quay, Toronto (the "Property"). The current estimated operating cost is \$37,000.00 annually based on the 2017 occupancy costs,

resulting in no cost to the City of Toronto assuming compliance to the tenancy agreement.

The total opportunity cost of the Lease over the five (5) year term is estimated to be approximately \$450,000.00 plus HST. This is based on a market value of \$15.00 per square foot for basic rent.

The Administration Building is currently classed as tax exempt. Should property tax exemption not be granted under this use, the Tenant will be responsible for paying property taxes.

During the Term of the Lease, basic building repairs shall be completed and fully funded by IPF and cultural programming uses shall commence by the end of year 2 of the Term. In 2017 and 2018, various assessments of the building (including Accessibility for Ontarians with Disabilities Act compliance) were performed and the cost to undertake a comprehensive rehabilitation of the building was estimated to be \$2,000,000.00 - \$3,000,000.00 (for clarity, these comprehensive repairs exceed the scope of basic building repairs to be initially undertaken by IPF). There is no provision included in the City's 10-Year Capital Plan for rehabilitation costs. Any such future provision would be referred to a future budget process, in consideration of other capital priorities.

IPF shall also provide the City with a detailed Business Plan for the City's review and approval for consideration of a potential longer term lease by the end of year 3 of the Term. The Business Plan will include but is not limited to the following: substantive renovation proposal, sustainable, long term funding (capital and operating) plan for the building, architectural plans, and a long term programming plan. The DCM will review the Business Plan in consultation with the GM and the Chief Planner and Executive Director, City Planning. The Landlord's decision to grant any renewal of the Lease to the Tenant or any new long term lease shall be at the sole and absolute discretion of City Council.

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

## **DECISION HISTORY**

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Shortly after the opening of Ireland Park in 2007, a 2009 City staff report recommended that as part of area redevelopment options then under study, the "...opportunity exists for the City to work with the Ireland Park Foundation to lease and renovate the (Administration Building) as a Cultural Centre that could support interpretation of Ireland Park along with a range of other activities as appropriate." The report also describes a series of restrictive covenants on the 5 Eireann Quay property which, per terms of the 1992 Harbourfront Implementation Agreement, limit use of the Administration Building for "public purposes" (including not-for-profit purposes, and commercial and institutional activities that are ancillary to or incidental with any public or not-for-profit purposes).

Following a 2011 business decision by City Council to lease the building on a temporary basis to Toronto Port Authority, the opportunity to explore an Irish cultural centre in the Administration Building was put on hiatus. The report is available on the City website at: <http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-24719.pdf>

At its meeting of January 26 and 27, 2011 City Council approved By-law 32-2011, to designate the property at 5 Eireann Quay (The Canada Malting Complex) as being of cultural heritage value or interest under Part IV of the Ontario Heritage Act. The designated property encompasses the Administration Building. The By-law is available on the City website at: <http://www.toronto.ca/legdocs/bylaws/2011/law0032.pdf>

The Bathurst Quay Neighbourhood Plan Study was initiated in response to concerns and questions arising through the review of Porter Airlines' request to amend the Tripartite Agreement that governs the operation of the island airport. At its meeting of April 1, 2 and 3, 2014, City Council considered a report on the amendment request, and identified the need for a Bathurst Quay Neighbourhood Plan study. The report is available on the City website at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX40.1>

At its meeting of July 7, 8 and 9, 2015 City Council considered a Status Report on the Bathurst Quay Neighbourhood Plan Study and adopted Preliminary Directions related to the development of the plan. City Council also requested a strategy to identify interim or temporary uses on and around the 5 Eireann Quay property in order to animate the area on an interim basis. The Status report is available on the City's website at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TE7.60>

At its meeting of July 4, 5, 6 and 7, 2017 City Council adopted the Bathurst Quay Neighbourhood Plan Interim report. Council additionally requested that the Chief Corporate Officer, with the Chief Planner and Executive Director, City Planning, undertake a process to select appropriate uses and occupants for the Administration Building on the 5 Eireann Quay property. Further, Council requested that future uses and occupants for the Administration Building be consistent with the neighbourhood plan's vision, guiding principles and action plan, which describe the building as appropriate for new cultural and community uses. The report is available on the City's website at: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE25.55>

At its meeting of June 5, 2018, the Government Management Committee requested that the Director, Real Estate Services, in consultation with the Director, Waterfront Secretariat, negotiate with Ireland Park Foundation terms for a short-term nominal sum lease of a portion of the Administration Building to be used as an arts and heritage destination, and subject to reaching satisfactory terms, report directly to City Council with recommendations on lease terms. <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM28.32>

At its meeting of June 6, 2018, the Toronto and East York Community Council (TEYCC) considered a Final Report on a City-initiated Official Plan amendment to implement the

findings of the Bathurst Quay Neighbourhood Plan Study, including the planned adaptive re-use of the Administration Building as a part of a Bathurst Quay community and cultural hub. TEYCC recommended that Council approve the draft Official Plan amendment). The Final Report and draft Official Plan amendment are being considered by City Council as a separate item on this agenda.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.TE33.9>

## **COMMENTS**

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City staff from each of Real Estate Services, City Planning, and Economic Development and Culture, have conducted a review of Ireland Park Foundation's current proposal to re-purpose the City-owned Administration Building at 5 Eireann Quay as a Cultural and Interpretive Centre which will make the Bathurst Quay Neighbourhood an arts and heritage destination. The results of that City staff review are outlined below.

### **1992 Harbourfront Implementation Agreement**

Under terms of the 1992 Harbourfront Implementation Agreement, the Administration Building and surrounding property are subject to a restrictive covenant that limits uses to "public purposes", as defined in the 1992 Agreement as "not-for-profit purposes, commercial and institutional activities that are ancillary to or incidental with any public or not-for-profit purposes, temporary surface parking and temporary uses existing as of the date of actual conveyance of such sites to the City.". City staff have received documentation to confirm Ireland Park Foundation's status as a registered not-for-profit, charitable corporation; and are satisfied that the Foundation's arts and heritage use proposal for the building meets the definition of "public purpose" under the 1992 Harbourfront Implementation Agreement.

### **Stakeholder Consultation**

The revitalization of the Canada Malting Silos site including opportunities for cultural uses with the Administration Building was an important focus of the Bathurst Quay Neighbourhood Plan Study stakeholder engagement process. Several engagement events with a broad range of stakeholders were undertaken to solicit ideas on the rehabilitation of the silo site. These have included among others, open houses, individual resident group meetings, community workshops and community working group meetings. The feedback received has been very supportive of the idea of a Community and Cultural Hub on the Canada Malting Silos site with an emphasis on cultural and community uses within the Administration Building, including the proposed use of the building by IPF. Lastly, the IPF presented their proposal at a March 2018 meeting of the local resident's association, and the feedback provided from meeting attendees was positive.

## **Land Use Planning Framework**

City staff have reviewed the proposal in the context of the City's Official Plan, Central Waterfront Secondary Plan and Zoning By-law as well as the Council-adopted recommendations contained within both the Bathurst Quay Neighbourhood Plan, and the TOCore Downtown Parks & Public Realm Plan. The site is designated Parks and Open Space Areas in the Central Waterfront Secondary Plan. Permitted uses include park, open space, natural areas, plazas, and compatible community, recreation, cultural, restaurant and entertainment uses. The proposal supports and advances the policies of the Official Plan and Central Waterfront Secondary Plan and the findings of the Bathurst Quay Neighbourhood Plan Study. The site is zoned Park (G) within the Harbourfront Zoning By-law 289-93 as amended which permits parks, playgrounds and public programming activities of a cultural, social, charitable, artistic, recreational or educational nature. City staff are satisfied that the proposal is appropriate for the Administration Building and consistent with the planning framework for the site.

## **Arts & Culture Perspective**

The City has a long history of developing partnerships with the not-for-profit sector to foster culture through renovated, expanded and new cultural facilities. Providing the arts and cultural community with access to municipally-owned facilities/properties helps ensure access and opportunity for cultural participation to all citizens and visitors to Toronto. Finally, redeveloping under-utilized municipal facilities which often have heritage value ensures there is a supply of affordable, sustainable cultural space as per Recommendation No. 1 in "Creative Capital Gains - An Action Plan for Toronto". <https://www.toronto.ca/wp-content/uploads/2017/08/968d-creative-capital-gains-report-august9.pdf>

## **Heritage Preservation By-law 32-2011**

From the information available, City staff are satisfied the use proposal respects the cultural heritage value of the Canada Malting Complex, as protected under Part IV of the Ontario Heritage Act. Future detailed architectural plans will be subject to a Heritage Impact Assessment.

Real Estate Services have discussed the Major Terms and Conditions with IPF and both parties consider the Major Terms and Conditions to be fair and reasonable.

## CONTACT

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## SIGNATURE

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Mike Williams  
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Economic Development and Culture

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Gregg Lintern, MCIP, RPP  
Chief Planner and Executive Director  
City Planning

## ATTACHMENTS

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Appendix "A" – Major Terms and Conditions  
Appendix "B" – Location Map

## **APPENDIX "A"**

### **Major Terms and Conditions**

#### **Tenant:**

Ireland Park Foundation

#### **Leased Premises:**

Approximately 6,000.00 - 7,500.00 sq. ft. (to be determined by the Landlord) of the Administration Building situated at 5 Eireann Quay

#### **Commencement Date:**

September 1, 2018

#### **Term:**

Five (5) years commencing on September 1, 2018 and expiring on August 31, 2023.

#### **Use:**

The Leased Premises shall be used initially to carry out the leasehold improvements approved by the Landlord. Not later than 2 years after the Commencement Date of the Term of the Lease, the Leased Premises shall be used and continually operated throughout the Term as a Cultural and Interpretive Centre, providing public commemorative space to acknowledge the Irish famine immigrants and their families to Canada, organizing cultural events to celebrate the historical relationship between Canada and Ireland, hosting fundraising events, and carrying on such other activities consistent with the articles of the Ireland Park Foundation.

#### **Basic Rent:**

Basic Rent for the Term is \$2.00 per annum plus all applicable taxes.

#### **Net Lease:**

The Lease shall be absolutely net to the Landlord. During the Term or any extension or renewal thereof, the Tenant shall be responsible for all applicable costs, taxes, charges, expenses and outlays of any nature whatsoever arising from or relating to the use and occupancy of the Leased Premises. Any obligation which is not stated to be that of the Landlord shall be the Tenant's responsibility.



**Operating Costs:**

The Tenant shall pay all realty taxes and operating costs related to their Leased Premises. "Operating Costs" means the total of all costs and expenses attributable to the maintenance, repair, administration, management and operation of the Property including, without limiting the generality of the foregoing: utilities, security, insurance, all taxes including applicable property taxes, supervision, landscaping, window cleaning, eaves trough cleaning, pest management, waste collection, disposal and recycling, snow removal, and other costs of maintenance and operation.

**Maintenance Reports:**

The City shall have the right to request and review the Tenant's maintenance reports and logs pertaining to building operations and repairs at any time.

**Business Plan:**

The Tenant will provide the Landlord with a detailed Business Plan for the City's review and approval by the end of year 3 of the Term. The Business Plan will include but is not limited to the following: substantive renovation proposal, sustainable, long term funding (capital and operating) plan for the building, architectural plans, and a long term programming plan. The DCM will review the Business Plan in consultation with the GM and Chief Planner and Executive Director, City Planning. The Landlord's decision to grant any renewal of the Lease to the Tenant or any long term lease will be at the sole and absolute discretion of City Council.

**Early Termination:**

Either party may terminate the Lease at any time during the Term on not less than six (6) months notice.

The Landlord shall also have the right to terminate the Lease without notice if the Tenant is, at any time during the Term, including any renewals and extensions thereafter, no longer a Not-for-profit corporation, no longer financially viable, fails to commence programming by year 2 of the Term or fails to submit a satisfactory Business Plan (as described above), in each instance as determined by the Landlord acting reasonably, and provided that the Landlord has not waived, or is not willing to waive the relevant criteria. An early termination as a result of the above shall not result in contractual damages for the Tenant notwithstanding any balance remaining in the Term of the Lease.

**Standard Lease:**

The Lease shall be prepared by the Landlord on the Landlord's standard form, which shall contain such further revisions and other terms and conditions as may be satisfactory to the Deputy City Manager, Internal Corporate Services, and in a form acceptable to the City Solicitor.

**Insurance:**

The Tenant is to provide proof of insurance in accordance with the Landlord's insurance requirements outlined in the Lease, including but not limited to comprehensive general liability insurance with limits of not less than Five Million Dollars (\$5,000,000.00) per occurrence prior to the commencement of the Term and on an annual basis.

**Indemnity by Tenant:**

The Tenant will fully indemnify and save harmless the Landlord, its respective employees, agents and those for whom it is at law responsible for of, from and against all claims whatsoever. The Tenant agrees that it will not pursue any claim against a third party which may result in any claim by such third party against the Landlord.

**Condition of Leased Premises:**

The Tenant will accept the Leased Premises and the Property in an "as is" condition.

**Repairs and Maintenance:**

The Tenant will be responsible for all repairs and maintenance with respect to the Leased Premises over the Term of the Lease. In the case of an emergency structural repair (foundation, exterior walls, bearing walls, roof) to the building, the Landlord will make such repairs but the Tenant will pay it's proportionate share of such cost as operating cost.

**Leasehold Improvements:**

Subject to obtaining the consent of the Landlord, the Tenant at its sole cost and expense may make alterations and improvements to the Leased Premises. At the end of the Term the Tenant shall not be required to remove any leasehold improvements except to the extent that the Landlord requires removal of any alterations or improvements made by the Tenant.

**Assignment and Subleasing:**

The Tenant shall not sell, assign or otherwise dispose of its rights and obligations under the Lease or permit any other person or organization to occupy or use the Leased Premises, or any part thereof, or sublet the Lease Premises, or any part thereof, to a third party or in any way charge, encumber or pledge the Lease or its interest therein without the prior written consent of the Landlord, which consent may be unreasonably withheld or delayed and need not be based upon any financial considerations whatsoever.

**Appendix "B"**  
**Location Map: 5 Eireann Quay, Toronto**

