



REPORT FOR ACTION

Community Space Tenancy Lease with North York Harvest Food Bank at 2975 Don Mills Road West, Rooms 123 and 124 – Community Space Tenancy Lease and Municipal Capital Facility Designation with North York Harvest Food Bank

Date: April 13, 2018

To: Government Management Committee

From: Director, Real Estate Services, Internal Corporate Services
and Executive Director, Social Development, Finance and Administration

Wards: 33 – Don Valley East

SUMMARY

The purpose of this report is to obtain City Council authority: (i) to enter into a Community Space Tenancy lease under the Community Space Tenancy Policy with North York Harvest Food Bank for a five (5) year term for approximately 621 square feet of space located at 2975 Don Mills Road West, Toronto, Rooms 123 and 124; (ii) to allow North York Harvest Food Bank to sublease a portion of their space to Flemingdon Health Centre and Working Women Community Centre; and (iii) for the adoption of the necessary by-law to designate the premises as a municipal capital facility, and to provide a property tax exemption for municipal and education purposes.

The North York Harvest Food Bank space is used to build a healthy community through food by offering a variety of programs, including community kitchens, drop-in food bank hours, food skills workshops, gardening workshops and farm trips. It runs as a collaboration among North York Harvest Food Bank, Flemingdon Health Centre and Working Women Community Centre. North York Harvest Food Bank primarily runs the food bank drop-in program, Flemingdon Health Centre runs cooking and nutrition programming and Working Women Community Centre supports the local garden program located next door to the Oriole Community Centre.

RECOMMENDATIONS

The Director, Real Estate Services and Executive Director, Social Development, Finance & Administration recommend that:

1. City Council authorize the City to enter into a Community Space Tenancy lease with North York Harvest Food Bank ("NYHFB") pursuant to the Community Space Tenancy

Policy ("CST Policy"), for space at 2975 Don Mills Road West, Toronto, being Rooms 123 and 124 (the "Leased Premises"), for a five (5) year term, substantially on the terms and conditions set out in the attached Appendix "A", with such revisions thereto and on such other or amended terms and conditions acceptable to the Deputy City Manager, Internal Corporate Services, or his or her designate and in a form acceptable to the City Solicitor.

2. City Council consent to the sublease by NYHFB of a portion of its Leased Premises to Flemingdon Health Centre ("FHC") and Working Women Community Centre ("WWCC"), and authorize the City to enter into Sublease Acknowledgement Agreements with NYHFB, and the subtenants, FHC and WWCC, substantially on the terms and conditions set out in the attached Appendix "A", with such revisions thereto and on such other or amended terms and conditions acceptable to the Deputy City Manager, Internal Corporate Services, or his or her designate and in a form acceptable to the City Solicitor.

3. City Council confirms that the Request for Expressions of Interest ("REOI") requirement as set out in sections 4.1 and 5.3.1 of the Community Space Tenancy Policy adopted by City Council on November 7, 8 and 9, 2017 in Item EX28.8, does not apply to space leased to: (i) existing tenant(s) and/or subtenant(s) under the Policy for City-Owned Space Provided at Below-Market Rent, or predating such policy, transitioning to a CST lease, including space for which a REOI exemption was previously granted and (ii) existing tenant(s) and/or subtenant(s) under the CST Policy upon renewal or extension of existing space.

4. City Council pass a by-law pursuant to section 252 of the City of Toronto Act, 2006, providing authority to:

a. enter into a municipal capital facility agreement with NYHFB for the property known as 2975 Don Mills Road West, Rooms 123 and 124, with respect to approximately 621 square feet of rentable area owned by the City of Toronto, for the purposes of providing a municipal capital facility related to the provision of social and health services, such municipal capital facility agreement to be conditional on the lease to NYHFB and the subleases to FHC and WWCC being in effect;

b. exempt the Leased Premises from taxation for municipal and school purposes, which tax exemption is to be effective from the latest of (i) the commencement date of the Community Space Tenancy lease, (ii) the date of the municipal capital facility agreement is entered into and (iii) the date the tax exemption by-law is enacted.

5. City Council direct the City Clerk to give written notice of the by-law to the Minister of Finance, the Municipal Property Assessment Corporation, the Toronto District School Board, the Toronto Catholic District School Board, the Conseil Scolaire de District du Centre-Sud-Ouest, and the Conseil Scolaire de District du Catholique Centre-Sud.

6. City Council authorize each of the Deputy City Manager, Internal Corporate Services and the Director of Real Estate Services severally to execute the Community Space Tenancy lease, the Sublease Acknowledgement Agreements, and any related documents on behalf of the City.

7. City Council authorize the Deputy City Manager, Internal Corporate Services or his or her designate to administer and manage the lease and sublease agreements including the provision of any amendments, consents, approvals, waivers, notices, and notices of termination, provided that the Deputy City Manager, Internal Corporate Services may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.

FINANCIAL IMPACT

The proposed Community Space Tenancy lease to NYHFB involves a nominal sum lease of approximately 621 square feet of space.

NYHFB will be responsible for its proportionate share of all realty taxes and operating costs related to the lands and building municipally known as 2975 Don Mills Road West, Toronto (the "Property"). NYHFB's proportionate share of operating cost is, currently estimated to be \$6,831.00 per year based on a rate of \$11.00 per square foot per annum; resulting in no operating costs 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 \$22,331.00.

NYHFB's total operating budget for 2016 fiscal year totalled \$1,699,848.00 with an operating budget allocated for programming costs dedicated to the Leased Premises of \$22,750.00. For the five (5) year term, the organization will be investing an estimated \$113,750.00 into the community through their programs and services, contingent on funding.

The property located at 2975 Don Mills Road West is owned by the City of Toronto and Rooms 123 and 124, comprising an area of approximately 621 square feet of space, will be leased to NYHFB. Although properties owned by the City of Toronto are exempt from taxation, NYHFB is a taxable tenant and the property is therefore subject to taxation. The annual property taxes on the 621 square feet of space that will be leased by NYHFB is estimated at approximately \$2,528, comprised of a municipal portion of \$1,299 and a provincial education portion of \$1,229, based on 2018 Current Value Assessment (CVA) and 2017 tax rates.

Providing a property tax exemption for the 621 square feet of space will result in a net annual reduction in property tax revenue to the City of approximately \$1,299, representing the municipal portion of taxes that are currently payable that will no longer be collected once the premises is designated as a municipal capital facility, as shown in Table 1 below. The provincial education portion of property taxes of \$1,229 will no

longer be required to be remitted to the Province once the exemption for this property takes effect, with no net impact to the City.

Table 1: Financial Implications of Property Tax Exemption–2975 Don Mills Road West, Rooms 123 & 124

	Municipal Taxes	+ Education Taxes	= Total Property Taxes
Amounts Payable if Taxable (annual)	\$1,299	\$1,229	\$2,528
Amounts Payable if Exempt	\$0	\$0	\$0
Reduction in Municipal Tax Revenues:			\$1,299
Reduction in Education Taxes Remitted:			\$1,229

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

DECISION HISTORY

At its meeting on October 1, 2, and 3, 2002, Council adopted the “Policy for City-Owned Space Provided at Below-Market Rent” (the "Below-Market Rent Policy") as the first step in rationalizing how City-owned space is provided to community and cultural organizations.

<http://www.toronto.ca/legdocs/2002/agendas/council/cc021001/pof13rpt/cl001.pdf>

At its meeting on November 29, 30 and December 1, 2011, City Council adopted Item No. GM9.9 titled "Below-Market Rent Agreement at 2975 Don Mills Road West" thereby authorizing a Below Market Rent ("BMR") lease agreement with North York Harvest Food Bank for a five (5) year term and granted an exemption from the Below-Market Rent Policy to allow NYHFB to become a tenant at the Leased Premises without the need to solicit a REOI as required by the Below-Market Rent Policy.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.GM9.9>

At its meeting on July 16, 17, 18 and 19, 2013, Council adopted Item No. GM23.13 a report titled " Below-Market Rent Agreements at 3401 Dufferin Street and at 2975 Don Mills Road West" to grant an amendment to the existing BMR lease agreement with NYHFB to add approximately 117 square feet of additional space on the first floor of the building located on the property known as 2975 Don Mills Road West.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.GM23.13>

At its meeting on November 7, 8 and 9, 2017, Council adopted the "Community Space Tenancy Policy", replacing the Below-Market Rent Policy, and allows Community Partner Tenants to sublease a portion of their tenanted space to no more than two subtenants.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX28.8>

COMMENTS

Background

Oriole Community Centre located at 2975 Don Mills Road West, Toronto, is a Parks, Forestry and Recreation ("PF&R") operating facility owned by the City.

In 2009, Social Development, Finance & Administration ("SDF") together with Food Securities Network Committee, PF&R, Fairview Community Health Centre, Toronto Public Health, and Flemingdon Food Bank, conducted an extensive research and mapping project and identified a lack of accessible food security programs within Ward 33, and identified a space within the Oriole Community Centre as an ideal location to meet this local need, and also selected NYHFB to be the agency to apply for a below-market rent of the space.

City Council in 2011 in granting the initial lease of the space at 2975 Don Mills Road to NYHFB, also granted an exemption from the REOI requirement for determining a BMR tenant at the Leased Premises.

On February 1, 2012, the City entered into a BMR lease with NYHFB pursuant to the Below-Market Rent Policy, for approximately 504 square feet of space in the Oriole Community Centre at 2975 Don Mills Road West, Room 124, for a five (5) year term commencing October 1, 2012.

The lease was amended in August 2013 to add the use of an adjacent room (Room 123), containing approximately 117 square feet of space for storage purposes, resulting in a total leased area of 621 square feet. NYHFB invested approximately \$25,000.00 to fit up the additional space.

On November 1, 2015, extensive renovations to the Oriole Community Centre necessitated the shutdown of the building. During the renovations, NYHFB was relocated from the Leased Premises to space located in the Parkway Forest Community Centre through a permit issued by PF&R.

NYHFB resumed occupancy of the Leased Premises on April 1, 2017 with the term of the BMR lease expiring on September 30, 2017. NYHFB has since been in over hold and expressed interest in continuing to lease the same space at 2975 Don Mills Road West.

NYHFB operates the "Oriole Food Space" in the Leased Premises together with FHC and WWCC. FHC and WWCC utilize the Leased Premises to provide a multi-use community food space, which includes a food bank that collects, sorts and distributes food to local residents, a variety of programs, such as food education programs and community kitchens, and resource and referral based services on its network of neighbourhood community programs.

NYHFB would be considered a Community Partner Tenant under the CST Policy. Under CST Policy, Community Partner Tenants are permitted to sublease a portion of the Community Space to no more than two (2) qualified subtenants. NYHFB is requesting approval to sublease a portion of the Leased Premises to FHC and WWCC, for the continual operation of the Oriole Food Space. Prior to June 1, 2017, FHC and WWCC have utilized the Oriole Community Centre on an intermittent basis pursuant to permissions granted by PF&R, to support NYHFB's programming. The sublease arrangement will support capacity for NYHFB and formalize the continued collaboration within the neighbourhood community network to meet local community needs.

Under the CST Policy, to be eligible for Community Space Tenancies, an organization seeking to apply for or enter into a Community Space Tenancy or a sublease thereof, must:

Be a not-for-profit corporation, and may not be a subsidiary or related entity of a for-profit corporation or a for-profit social enterprise.

Provide social or health services or cultural or recreational services to Toronto residents that: (i) meet a community need; (ii) which are consistent with the strategic direction and neighbourhood, and/or specific objectives of City Council and/or a City Division; (iii) are services that the City may otherwise provide; and (iv) will be the only services and functions provided in the Community Space and will be available to the public.

Be in good financial standing and not in default under any existing lease, service agreement, or other agreement with the City, and have limited risk of insolvency or bankruptcy.

Satisfy all requirements outlined in the REOI and in the CST Policy, and comply with all applicable laws and policies of the City.

An eligibility review conducted by SDFA determined that NYHFB is eligible under the CST Policy to lease Community Space.

An eligibility review conducted by SDFA determined that FHC and WWCC each meet the eligibility requirements under the CST Policy.

Once an REOI has been conducted for a Community Space and a suitable tenant has been identified, it is not necessary to conduct an REOI for the Community Space upon a renewal or extension of the lease. For clarification, this would apply: (i) where an existing tenant(s) and/or subtenant(s) occupying space under the Below-Market Rent Policy, or predating such policy, is transition to a CST lease, including space where a REOI exemption was previously granted, and (ii) for existing tenant(s) and/or subtenant(s) under the CST Policy upon renewal or extension of the existing space.

NYHFB is a registered not-for-profit organization located throughout north Toronto. The organization provides dignified food assistance, education and long-term food solutions to low-income individuals. The organization plans to serve a total of 1140 individuals with 11 full-time staff, 20 part-time staff and 160 volunteers in 2018.

NYHFB runs the Oriole Food Space in collaboration with FHC and WWCC. In 2017, the three (3) organizations secured a three (3) year grant (\$629,700.00) from the Ontario Trillium Foundation to build a healthy community through food. NYHFB is the lead for the tenancy; they will run the food bank drop-in programs three (3) days per week at the Leased Premises. FHC will run the cooking and nutrition program, while WWCC will support the local garden program for one day per week. Together the organizations intend to use the Leased Premises to offer a variety of programs, including emergency food drop-ins, peer food ambassador training, cooking and community kitchen, food skills workshops as well as gardening workshops and farm trips.

The Oriole Community Centre continues to be operated by PF&R. NYHFB's use is deemed compatible with the existing recreational uses of the facility and is also compatible with City's mandate under the Food Strategy and Poverty Reduction Strategy.

A Community Space Tenancy lease with NYHFB for five (5) years and Sublease Acknowledge Agreements with FHC and WWCC would help the organizations to continue to use the Leased Premises to promote a healthy local community, support the strategies of the City's Poverty Reduction Strategies and address community needs.

Municipal Capital Facility Designation

In accordance with section 4.4.3 of the CST Policy, this report is also recommending that City Council exempt the Leased Premises from taxation for municipal and school purposes. Properties "owned and occupied" by a municipality or local board are exempt from taxation pursuant to section 3 of the Assessment Act. However, NYHFB is a taxable tenant of the Leased Premises, because where a municipality or local board leases property that would normally be subject to taxation, this exemption does not apply.

The property tax exemption on the space, which will be leased by NYHFB, will not apply unless City Council agrees to provide a tax exemption, by way of a municipal capital facility agreement under section 252 of the City of Toronto Act, 2006.

Section 252 of the City of Toronto Act, 2006 allows the City to enter into agreements with any person for the provision of municipal capital facilities, and allows City Council to exempt from taxation for municipal and school purposes, land or a portion of land, on which municipal capital facilities are or will be located.

Ontario Regulation 598/06 prescribes City facilities related to the provision of social and health services, such as those services being provided by NYHFB, including the services being provided by its sub-tenants, FHC and WWCC, as eligible municipal capital facilities for the purpose of section 252. Under section 252 of the City of Toronto Act, City Council is required to pass a by-law providing authority to:

- a. enter into a municipal capital facility agreement with NYHFB for the Leased Premises for the purposes of providing a municipal capital facility related to the provision of social and health services; and

b. exempt the Leased Premises from taxation for municipal and school purposes, which tax exemption is to be effective from the latest of (i) the commencement date of the Community Space Tenancy lease, (ii) the date of the municipal capital facility agreement is entered into and (iii) the date the tax exemption by-law is enacted.

Upon the passing of this by-law, the City Clerk must give written notice of the by-law to the Minister of Finance. For the tax exemption, the City Clerk must also provide a written notice of the contents of the by-law to the Municipal Property Assessment Corporation and the Secretary of any affected school board(s).

CONTACT

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SIGNATURE

David Jollimore, Director
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Chris Brillinger, Executive Director
Social Development, Finance & Administration

ATTACHMENTS

Appendix "A" – Major Terms and Conditions
Appendix "B" – Location Map
Appendix "C" - Site Plan of Leased Premises

APPENDIX “A” - Major Terms and Conditions

Community Space Tenancy Lease

Landlord:

City of Toronto

Tenant:

North York Harvest Food Bank

Leased Premises:

2975 Don Mills Road West, Toronto, Ontario, Rooms 123 and 124, comprising an area of approximately 621 square feet of space.

Commencement Date:

January 1, 2018

Term:

Five (5) years commencing on January 1, 2018 and expiring on December 31, 2022.

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 thereafter, 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 its proportionate share of all realty taxes and operating costs related to the Property. “Operating Costs” means the total of all costs and expenses attributable to the maintenance, repair, administration, management and operation of the Property including, without limited the generality of the foregoing: utilities, security, insurance, all taxes including applicable property taxes, supervision, landscaping, window cleaning, waste collection, disposal and recycling, snow removal and other costs of maintenance and operation.

Use:

Room 124 of the Leased Premises shall be used and shall continually be operated throughout the Term for a food bank including collection of food, beverages and household products, sorting, and distribution to residents, as well as research and education, and for the provision of a network of neighbourhood community programs as set out in the Tenant's Service Agreement with the City.

Room 123 of the Leased Premises shall be used solely for the purpose of storage space to support the Tenant's Permitted Use.

Hazardous Substances:

The Tenant shall not cause or allow any hazardous substances or materials to be stored or used at the Leased Premises.

Early Termination:

The Landlord shall have the right to terminate the Lease for any purpose at any time during the Term and any renewal/extension thereof upon providing the Tenant with sixty (60) day's prior written notice.

Standard Lease:

The Lease shall be drafted 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 prior to the commencement of the Term and on an annual basis, 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.

Condition of Leased Premises:

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

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.

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.

Sublease Acknowledgement Agreements

Subleased Premises: 2975 Don Mills Road West, Toronto, Rooms 123 and 124

Rentable Area: Approximately 621 square feet

Sublandlord: North York Harvest Food Bank

Subtenants:

1. Flemingdon Health Centre
2. Working Women Community Centre

Sublease Term: Five (5) years less 1 day

Each subtenant shall be entitled to the use of the Subleased Premises three (3) days per week at mutually agreed upon hours, and scheduling for the days/hours of use may be increased or decreased upon the mutual agreement of the parties.

Commencement Date: January 1, 2018

Use:

The Subtenants shall use the Subleased Premises only for the provision of community programs and community food space/community kitchen, with programming focused on food education, cooking, nutrition and gardening.

Rent: Basic rent of \$2.00 per annum plus all applicable taxes

Additional Rent:

The Sublandlord shall be responsible for its proportionate share of operating costs to the City, which are estimated to be \$11.00 per square feet in 2018 and shall also be responsible for any other applicable additional costs related to the Leased Premises. The Sublandlord shall be permitted to charge cost to the Subtenants on a cost-recovery basis only.

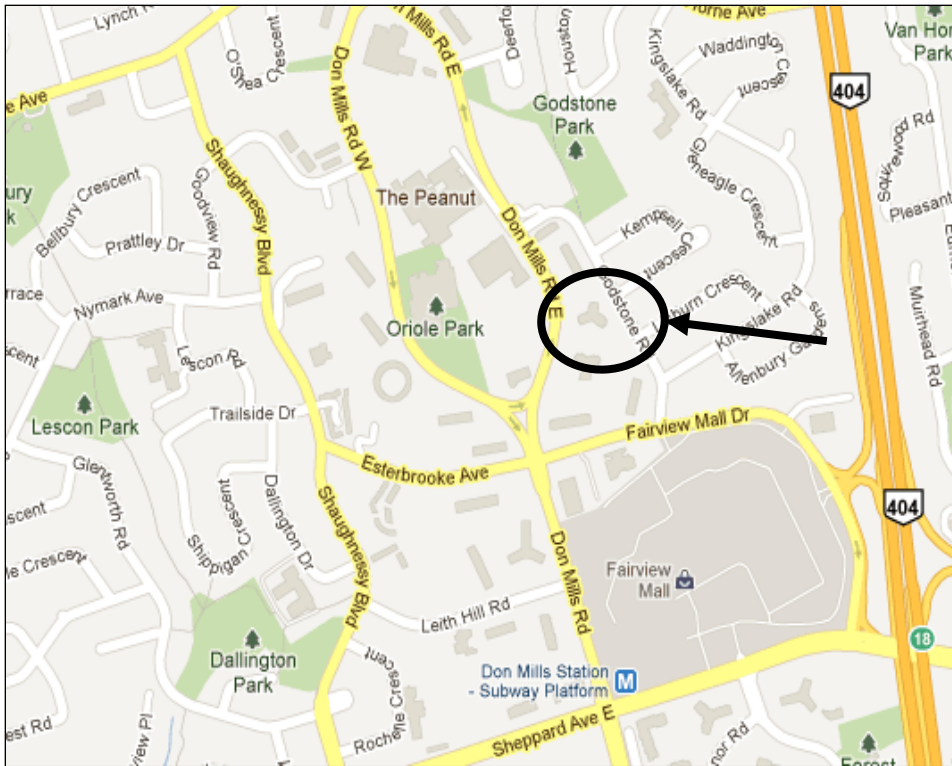
Miscellaneous:

Each Subtenant must each meet and continue to meet the eligibility requirements under the CST Policy throughout the term of the Sublease.

The Subtenants agree to abide by the terms of the head Lease and to perform all the covenants on the part of the Tenant contained in the head Lease as it applies to the Subleased Premises.

Appendix "B" - Location Map

2975 Don Mills Road West



Community Space Tenancy Lease with North York Harvest Food Bank
at 2975 Don Mills Road West, Rooms 123 and 124

Appendix "C" - Site Plan of Leased Premises

