

Community Space Tenancy Lease Agreement with Theatre Passe Muraille at 16 Ryerson Avenue

Date: May 18, 2018

To: Government Management Committee

From: Director, Real Estate Services

and General Manager, Economic Development and Culture

Wards: Ward 20 - Trinity Spadina

SUMMARY

The purpose of this report is to obtain City Council authority to enter into a Community Space Tenancy lease with Theatre Passe Muraille (TPM) for approximately 5,365 square feet of City-owned space located at 16 Ryerson Avenue, in the building commonly known as the former Nasmith Bakery and Stables.

RECOMMENDATIONS

The Director, Real Estate Services and the General Manager, Economic Development and Culture, recommend that:

1. City Council authorize the City to enter into a Community Space Tenancy lease (the "Lease") with Theatre Passe Muraille pursuant to the Community Space Tenancy Policy as a Community Tenant for the lands and premises located at 16 Ryerson Avenue and known as the former Nasmith Bakery and Stables 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 in consultation with the General Manager, Economic Development and Culture, and in a form acceptable to the City Solicitor.
2. City Council authorize each of the Deputy City Manager, Internal Corporate Services and the Director of Real Estate Services severally to execute the Lease and any related documents on behalf of the City.
3. City Council authorize the Deputy City Manager, Internal Corporate Services or his/her designate to administer and manage the Lease, 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 Lease is for nominal rent in accordance with the Community Space Tenancy Policy (the "CST Policy").

In accordance with the terms of the Lease, the tenant, Theatre Passe Muraille ("TPM") will be responsible for all realty taxes and operating costs related to the lands and premises municipally known as 16 Ryerson Avenue, Toronto (the "Property"), currently estimated at \$152,214 per year, or \$28.37 per square foot based on the 2017 occupancy costs reported by TPM; 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 \$843,144 plus HST. The total opportunity cost over the five (5) year renewal term is approximately \$927,765 plus HST. The total opportunity cost for both the agreement and the renewal terms is \$1,770,909 plus HST.

The theatre property, which is located at 16 Ryerson Avenue, is owned by the City and leased to TPM and is currently classed as tax exempt. The facility qualifies for tax exemption as a 'Small Theatre' under section 3.26 of the Assessment Act as it contains less than 1,000 seats. The TPM building was renovated and converted into a theatre which is used 'predominantly to present live performances of drama, comedy, music or dance.' Due to the fact the facility qualifies for a tax exemption under the Assessment Act, a Municipal Capital Facilities (MCF) exemption for 16 Ryerson Avenue will not be pursued.

This new lease to begin July 1, 2018 will result in the tenant no longer contributing a minimum of \$20,000 annually to the 16 Ryerson Capital Maintenance Reserve Fund (XR3213) as was required under the previous lease.

The uncommitted balance of the Reserve at the end of 2017, prior to the application of funds to the 2018 Capital Budget was \$229,645. The 2018 Approved Capital Budget includes \$0.190 million and the 2019-2027 Capital Plan includes \$1,682,000 for major maintenance of the building, of which \$127,000 is funded from the reserve. Once the balance of the reserve fund is expended all future capital maintenance on this facility will be debt funded through the Economic Development and Culture Capital Budget.

The Interim 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 "A Policy for City-Owned Space Provided at Below-Market Rent" (the "BMR 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>

In July 2007, Council approved staff recommendations to acquire 16 Ryerson Avenue as a City-owned performing arts centre and to enter into a below-market lease with Toronto Artscape Inc. with Theatre Passe Muraille as the sub-tenant.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2007.ED6.3>

Through subsequent reports, Council has refined the BMR Policy framework and has authorized the extension of existing BMR lease agreements. A report was submitted to City Council on November 19-20, 2007 titled "Providing City-Owned Space to Community Organizations at Below-Market Rent."

<http://www.toronto.ca/legdocs/2006/agendas/council/cc060925/pof7rpt/cl024.pdf>

One of the five key recommendations of Creative Capital Gains, the City's cultural action plan adopted by City Council, is "To ensure a supply of affordable, sustainable, cultural space." The renewal of an existing BMR lease supports this recommendation:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.ED3.3>

At its meeting of July 12, 13, 14, and 15, 2016, City Council directed the General Manager, Economic Development and Culture to include capital projects at 16 Ryerson Avenue to reduce the State of Good Repair backlog identified in the Building Condition Audit in 2014 and comply with the Accessibility for Ontarians with Disabilities Act in its 2017-2026 Capital Budget and Plan submission for consideration.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.EX16.39>

At its meeting on November 7, 8 and 9, 2018, City Council adopted the Community Space Tenancy Policy to replace the Below Market Rent Policy. The Community Space Tenancy Policy came into effect on January 1, 2018.

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

COMMENTS

Theatre Passe Muraille (TPM) is Canada's oldest alternative theatre devoted to the development and production of original Canadian work. It was founded in 1968 and is currently celebrating its 50th Anniversary Season. It has premiered over 400 plays in a rich legacy of ground-breaking theatre, featuring new Canadian plays, and mentoring burgeoning theatre organizations in Toronto.

TPM is a recipient of annual operating funding from the Toronto Arts Council (TAC). In 2017, the total grant allocations from the TAC equalled \$260,625 which included both operating and project funding. Part of TAC's funding recognizes that the arts facility is used by many other performing arts groups who do not have their own theatre, including independent artists and theatre festival organizations.

TPM is the sole tenant of 16 Ryerson Avenue, a designated heritage building known as the Nasmith Bakery and Stables building, built in 1902. TPM purchased the building in 1975 and converted it into the theatre but the City of Toronto is now the owner of the arts facility.

In November 2006, TPM approached the City about a serious financial situation facing the theatre. TPM had been struggling with a growing debt and in response, had re-mortgaged the building that they owned. This led TPM to realize that the solution of re-mortgaging their asset was not a sustainable financial solution in the long term.

In December 2007, the City acquired the building from Theatre Passe Muraille to assist them in managing a financial crisis while continuing to develop and produce Canadian Theatre in the building.

In January 2008, the City entered into a 10 year below market rent (BMR) lease with two, five-year renewal options. Toronto Artscape Inc. agreed to manage the building as a City-owned performing arts centre, operated by Theatre Passe Muraille as a sub-tenant. The lease established that \$200,000 from the proceeds of the sale of the building was to be used to create a Reserve Fund, held by the City as security for any future capital costs. A condition of the lease required the tenant to contribute a minimum of \$20,000 annually to the 16 Ryerson Capital Maintenance Reserve Fund (XR3213) to be applied to the capital costs of the building, through the Economic Development and Culture Division's Capital Budget.

The current lease expires June 30, 2018, and Artscape expressed to the City that it was no longer interested in renewing the lease itself. It wanted the City to lease the building directly to TPM, now that the organization has regained the financial and operational capacity to manage its own building.

The new lease to begin July 1, 2018 will result in the TPM no longer contributing a minimum of \$20,000 annually to the 16 Ryerson Capital maintenance Reserve Fund (XR3213) which was required as part of the lease with Artscape.

In 2014, an updated Building Condition Audit for 16 Ryerson Avenue identified a state of good repair backlog requiring \$1,000,000 needed to be invested in the building. Included in the Economic Development and Culture's 2018 - 2027 Approved Capital Budget and Plan are projects totalling \$190,000 in 2018 and \$1,682,000 from 2019 to 2027 for major maintenance of the building, primarily funded by City debt.

Theatre Passe Muraille has rebounded from their financial crisis of 2008 and has qualified staff in place to operate the theatre and maintain the facility. The recent review by EDC staff examined Theatre Passe Muraille's financial performance and position and their financial forecasting. The review concluded that Theatre Passe Muraille's resources are utilized efficiently and strategically and that they generally operate on a balanced budget. Similar to many other not-for-profit Theatre Companies, Theatre Passe Muraille is heavily dependent on grants and donations to maintain their operations.

Theatre Passe Muraille has demonstrated an ability to sustain a positive financial position and maintain investment in the capital reserve fund. This, alongside their longstanding stewardship of the building and continuation of valuable arts and culture programming in the community have led to a recommendation to issue this lease with Theatre Passe Muraille as the sole tenant.

CONTACT

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SIGNATURE

David Jollimore
Director, Real Estate Services

Mike Williams
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ATTACHMENTS

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

APPENDIX "A"

Major Terms and Conditions

Community Space Tenancy Lease at 16 Ryerson Avenue

Tenant:

Theatre Passe Muraille

Leased Premises:

Lands and premises situated at 16 Ryerson Avenue

Commencement Date:

July 1, 2018

Term:

Five (5) years commencing on July 1, 2018 and expiring on June 30, 2023, with an option to renew of five (5) years.

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 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, 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.

Use:

The Leased Premises shall be used and shall continually be operated throughout the Term for the purpose of promoting and carrying out its objects and activities to develop and produce innovative and provocative Canadian Theatre, and to nurture new and established artists and companies.

Early Termination:

The Landlord shall have the right to terminate the lease agreement if the Tenant is, at any time during the Term, including any renewals and extensions thereafter, no longer CST eligible or financially viable. 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 CST eligibility criteria. A termination resulting from a failure to remain CST eligible shall not result in contractual damages for the Tenant notwithstanding any balance remaining in the Term of the Lease.

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.

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 reasonable 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:

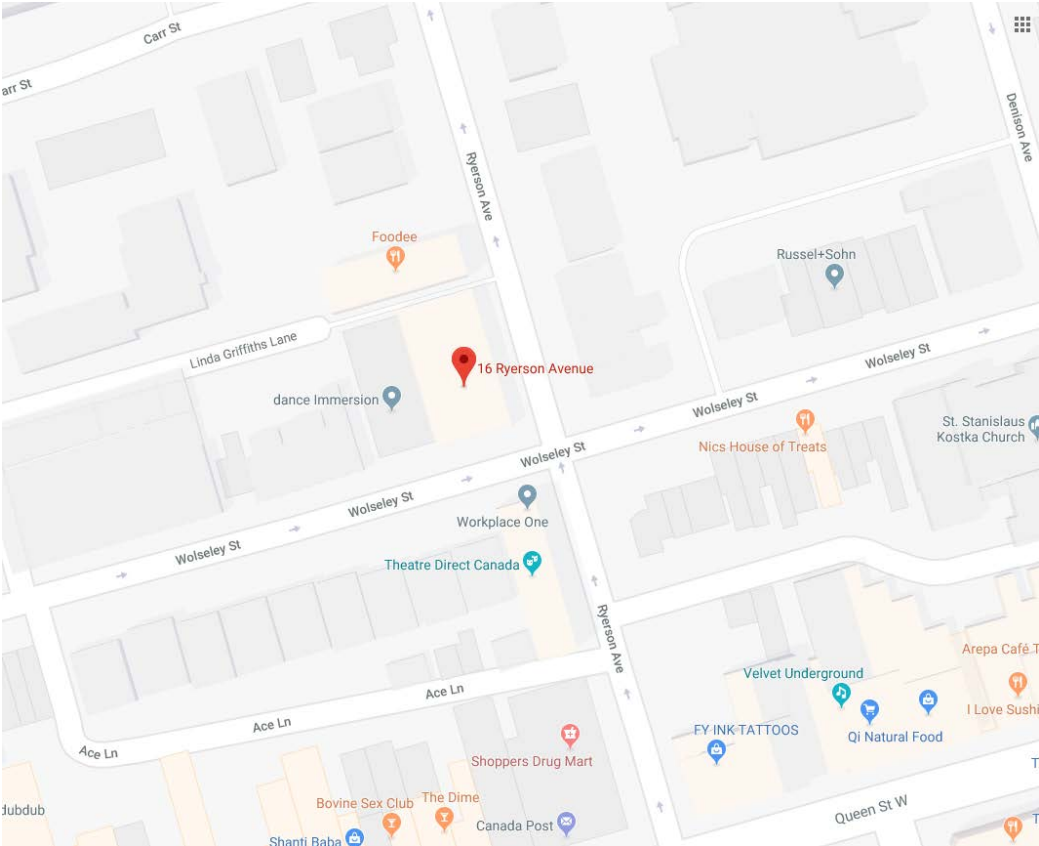
The Tenant will accept the Leased Premises and the Property in an "as is" condition.

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: 16 Ryerson Avenue, Toronto



16 Ryerson Avenue frontage

