

Various Agreements with The Canada Ireland Foundation and PortsToronto at 3 Eireann Quay

Date: November 5, 2021

To: City Council

From: Executive Director, Corporate Real Estate Management, General Manager, Economic Development and Culture, Chief Planner and Executive Director, City Planning

Wards: 10 - Spadina-Fort York

SUMMARY

The purpose of this report is to seek City Council authority to enter into various agreements in connection with the renovation work to be carried out under the Bathurst Quay Neighbourhood Plan. The Administration Building (the "Building") located at City-owned 3 Eireann Quay (the "Property") is currently leased to The Canada Ireland Foundation (the "Tenant", formerly known as Ireland Park Foundation) and PortsToronto. The City (the "Landlord") entered into a lease agreement with the then Ireland Park Foundation dated September 13, 2019 to lease part of the Building, comprising approximately 7,420 sq. ft. for a term of five (5) years commencing on August 1, 2019 and expiring on July 31, 2024 (the "Current Lease").

The City (the "Landlord") will terminate and surrender the Current Lease and enter into a new nominal 20-year lease (the "Lease") with the Tenant for part of the Building to permit the Tenant to lead the transformation of the Building into a waterfront cultural and interpretive center, providing public commemorative and event space to acknowledge the contribution of Irish famine immigrants and their families, and to honour the history of multiculturalism and migration in the City of Toronto.

The Tenant's renovation work will extend into PortsToronto's leased premises in the Building. The City will provide its consent to the sublease agreement to be entered into between PortsToronto and the Tenant, to permit the Tenant to carry out the renovation work within PortsToronto's leased premises.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management, the General Manager, Economic Development and Culture, and the Chief Planner and Executive Director, City Planning recommends that:

1. City Council waive the application of the Community Space Tenancy Policy ("C.S.T. Policy") in respect of the lease transaction including the requirements outlined in the Request for Expressions of Interest in the C.S.T. policy and declare that it is in the interest of the City to grant a new lease to The Canada Ireland Foundation (the "Tenant") for nominal consideration.
2. City Council authorize the Executive Director, Corporate Real Estate Management, in consultation with the General Manager, Economic Development and Culture and Chief Planner and Executive Director, City Planning, to negotiate a nominal sum 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 the City, as Landlord to enter into:
 - a. an agreement with Tenant to effect the termination and surrender of the existing lease between the City and the Tenant dated September 13, 2019 ("Surrender of Lease");
 - b. the Lease with the Tenant, for a portion of the Administration Building (the "Building") located at 3 Eireann Quay comprising approximately 7,436 square feet (the "Leased Premises") for a twenty (20) year term substantially on the terms and conditions set out in the attached Appendix A, including S.O.G.R. and A.O.D.A. work to be carried out at the Building in which the City will contribute up to \$1,976,850 (net of Harmonized Sales Tax), together with such other terms and conditions as may be deemed appropriate by the Executive Director, Corporate Real Estate Management in consultation with the General Manager, Economic Development and Culture, Chief Planner and Executive Director, City Planning and in a form acceptable to the City Solicitor.
4. City Council authorize the Executive Director, Corporate Real Estate Management to consent to the sublease agreement between the Tenant and PortsToronto (the "Landlord's Consent to the Sublease") in order for the Tenant to carry out its renovation work in PortsToronto's leased premises.
5. City Council authorize the Executive Director, Corporate Real Estate Management, as licensor to enter into a licence extension agreement with the Tenant to extend the licence agreement dated October 29, 2021 (as documented by Delegated Authority Form No. 2021-295) for a further term of up to twelve (12) months, as mutually agreed upon by both parties, for nominal consideration, for the purpose of construction staging in connection with the Tenant's renovation work at the Building (the "Licence Extension Agreement") and amend any terms and conditions as may be deemed appropriate by the Executive Director, Corporate Real Estate Management.

6. City Council authorize each of the Executive Director, Corporate Real Estate Management and the Director of Transaction Services severally to execute and deliver the Surrender of Lease, the Lease and any amendments to the Lease, the Landlord's Consent to the Sublease, the Licence Extension Agreement and any related documents contemplated thereunder on behalf of the City (collectively, the "Agreements").

7. City Council authorize the Executive Director, Corporate Real Estate Management, in consultation with the General Manager, Economic Development and Culture and Chief Planner and Executive Director, City Planning, to direct the appropriate City staff to collaborate with the Tenant for a protocol on occasional outdoor programming and activation (the "Protocol"). The Protocol shall provide guidance for the provision of occasional and temporary access to the Tenant to the patio/landscaped area immediately adjacent the Building for purposes consistent with the use provisions in the Lease including (a) the location and extent of areas to which access may be provided; (b) the types of events for which access may be provided; and (c) the frequency of use.

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

9. 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 Canada Ireland Foundation, with whom the City of Toronto will execute a lease for the property known as 3 Eireann Quay, for approximately 7,436 square feet owned by the City of Toronto, with respect to a facility used for cultural purposes; and

- b. exempt the Leased Premises from taxation for municipal and school purposes, with the tax exemption being effective from the latest of:

- 1. the commencement date of the lease;
- 2. the date the Municipal Capital Facility Agreement is entered into; and
- 3. the date the Tax Exemption By-law is enacted.

10. City Council pass a resolution that the Municipal Capital Facility referenced in Recommendation 9 is for the purposes of the City of Toronto and is for public use.

11. 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

FINANCIAL IMPACT

The Lease and Licence Extension Agreement is for nominal consideration.

In accordance with the terms of the Lease, the Tenant will be responsible for all realty taxes and operating costs related to the Leased Premises. The current estimated operating cost is \$21,151 annually based on the 2021 estimated occupancy costs resulting in no cost to the City. The Building is currently classed as tax exempt. Should property tax exemption not be granted under this use, the Tenant will be responsible for the payment of property taxes.

The total opportunity cost of the Lease over the twenty (20) year term is estimated to be approximately \$2,901,527 (net of Harmonized Sales Tax). This is based on a market value of \$19.51 per square foot for basic rent.

During the term of the existing lease, the Tenant was expected to complete basic building repairs at its sole cost; however, in 2017 and 2018, various assessments of the Building (including compliance with the Accessibility for Ontarians with Disabilities Act) were performed and the cost to undertake a comprehensive rehabilitation of the Building was estimated to be \$2,000,000 to \$3,000,000, which exceeded the scope of the basic building repairs that were initially undertaken by the Tenant.

The Tenant raised and secured approximately \$4,000,000 in funds towards the renovation of the Leased Premises. In addition to the funds raised by the Tenant, the City, under obligations as the Landlord, will contribute up to \$1,976,850 (net of Harmonized Sales Tax) to the Tenant's project budget to complete the required state of good repair ("S.O.G.R.") work and upgrades under the Accessibility for Ontarians with Disability Act ("A.O.D.A."). The Landlord would otherwise be responsible for carrying out both S.O.G.R. and A.O.D.A. work. The funding is included in Corporate Real Estate Management's 2022 – 2031 Capital Budget and Plan under the A.O.D.A. and S.O.G.R. program.

The Chief Financial Officer and Treasurer has been provided the financial impacts associated with this program for review as part of the 2022 budget process.

DECISION HISTORY

At its meeting of June 26, 27, 28 and 29, 2018, City Council adopted, with amendments, Item GM.28.32 the Selection of Ireland Park Foundation for the Establishment of an Arts and Heritage Destination in the Bathurst Quay Neighbourhood report, authorizing the City to enter into a nominal 5-year lease agreement with the Ireland Park Foundation for a portion of the Administration Building located at 3 Eireann Quay to carry out basic

leasehold improvements, and to use a portion of the Administration Building as a Cultural and Interpretive Centre.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.GM28.32>

At its meeting of June 26, 27, 28, and 29, 2018, City Council adopted 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.

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

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 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 3 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.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.TE25.55>

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 3 Eireann Quay property in order to animate the area on an interim basis.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.TE7.60>

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.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.EX40.1>

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.

<http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-24719.pdf>

At its meeting on November 30, December 1, 2, 4, and 7, 2009, City Council adopted item EX36.6 which authorized staff 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.

COMMENTS

Background

Since 2018, the City and Canada Ireland Foundation (formerly known as the Ireland Park Foundation) have been working together to activate the Building to assist in making the Bathurst Quay neighborhood an arts and heritage destination. The City and the Tenant initially entered into a five year lease dated Sept 1, 2018. The initial lease enables the Tenant to access the Building, work with City stakeholders, raise necessary funds to finance an extensive and critically-needed building rehabilitation and renovation (inclusive of achieving A.O.D.A. compliance, and a complete mechanical and electrical system upgrade), and create a business plan identifying how they propose to program the space, and to sustainably operate and maintain the Building in a fiscally responsible manner that does not rely on the City's subsidies.

On January 29, 2021, the Tenant provided the City with a detailed business plan for the City's review and approval (the "Business Plan"). The Business Plan includes, but is not limited to, the following: substantive renovation proposal, sustainable, long term funding (capital and operating) and fundraising plan for the Building, architectural plans, and a long term programming and events plan. Inter-divisional City staff have reviewed and are satisfied with the proposal. By moving forward with the recommendations, including entering into the Lease, the Tenant can proceed with the necessary and significant construction work and have the premises ready for the public's use in early 2023.

Lease Agreement

The Lease will commence on November 1, 2021, and expire on October 31, 2041, a term of 20 years. The Tenant will pay a nominal rent of \$2 per annum plus all applicable taxes. The Tenant will also be responsible for maintaining the S.O.G.R. of the Leased Premises, as well as making upgrades as necessary to comply with A.O.D.A. The City has agreed to contribute up to \$1,976,850 (net of Harmonized Sales Tax) to the Tenant's project budget to complete required S.O.G.R. and A.O.D.A. upgrades to the Leased Premises on behalf of the City. Under the Lease agreement, the Tenant is responsible for all applicable costs arising from the use of and occupancy of the Leased Premises.

The Lease needs to be executed before the Tenant can proceed with planned commencement of major construction and building alterations in November 2021 that are necessary to permit mobilization on site within the remaining 2021 construction season. The execution of the Lease will allow the Tenant to access the site prior to other City-led capital projects commencing on the same property between 2021 and 2023

Licence Extension Agreement

The City granted the Tenant a licence to use a part of the City-owned property surrounding the Building for the purpose of construction staging in connection with the renovation work at the Building. The Tenant has advised that they will require an extension of the current licence term as set out in the licence agreement dated October 29, 2021 (as documented by Delegated Authority Form No. 2021-295), for a further term of up to twelve (12) months for nominal consideration.

PortsToronto

At its meeting on July 12, 2011, City Council adopted measures that authorized the City to enter into a Master Agreement with the Toronto Port Authority (now PortsToronto), which included the granting of a reciprocal lease agreement to permit various uses on a portion of the lands at 3 Eireann Quay, including office space in the Building. PortsToronto continues to occupy a portion of the Building for these purposes under a lease agreement with the City. PortsToronto has agreed to sublease their leased premises for the duration of planned construction activities in the Building which City staff will negotiate and transact at fair market value using existing real estate delegated authorities.

CONTACT

Alison Folosea, Director, Transaction Services, Corporate Real Estate Management, 416-338-2998, Alison.Folosea@toronto.ca

Patrick Tobin, Director, Arts and Culture, Economic Development and Culture, 416-392-4166, Patrick.Tobin@toronto.ca

Bryan Bowen, Waterfront Project Manager, Waterfront Secretariat, City Planning, 416-338-4842, Bryan.Bowen@toronto.ca

SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

Cheryl Blackman
General Manager, Economic Development & Culture

Gregg Lintern
Chief Planner & Executive Director

ATTACHMENTS

Appendix A - Terms and Conditions of Lease Agreement

Appendix A - Terms and Conditions of Lease Agreement

Tenant: The Canada Ireland Foundation

Leased Premises: Approximately 7,436 square feet of the Administration Building (the "Building"), situated at 3 Eireann Quay (the "Property").

Term: Twenty (20) years commencing on November 1, 2021 and expiring on October 31, 2041 (the "Term").

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.

Use:

The Leased Premises shall be used and continually operated throughout the lease term as a Cultural and Interpretive Centre, providing public and private event space to acknowledge the contribution of Irish famine immigrants and their families to Canada; working in collaboration with other arts, cultural and non-for profit groups to provide cultural classes; offering visitor services and amenities in connection with exhibitions held at the Leased Premises; operating food and beverage services; and includes an office space for the operation of the Leased Premises (the "Use").

Right of Access:

Access will be provided to the Tenant across Landlord-owned land immediately adjacent to the Building for vehicles to support the operation of the Building including garbage and recycling, catering and event operations, food and beverage deliveries. For greater certainty, the parties agree that the right of access will not include dedicated parking for the Building.

Additional Rent:

The Tenant shall pay all costs and expenses attributable to the maintenance, repair, administration, management and operation of the Leased Premises 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 and Programming Reports:

The Landlord shall have the right to request and review: 1) the Tenant's maintenance reports and logs pertaining to Building operations and repairs at any time; and 2) a summary of the Tenant's annual programming and event schedule from time-to-time.

The Tenant shall submit its audited financial statements to the Landlord no later than six (6) months following the end of each Tenant's fiscal year.

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, and any extensions thereof, no longer a Not-for-Profit Corporation, no longer financially viable, fails to commence programming in accordance with the terms of the Lease or fails to submit a satisfactory business plan, 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.

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, 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.

During periods of construction only, the Tenant agrees to maintain, or cause to be maintained by their Contractor, said Commercial General Liability insurance in an amount not less than ten million dollars (\$10,000,000.00) per occurrence, and also adds the Landlord as additional insured.

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. In the case of an emergency structural repair (foundation, exterior walls, bearing walls, roof) to the building, the Landlord will make such repairs and the Tenant will pay its proportionate share of such cost as operating cost.

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 Leased 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. For greater certainty, the Parties agree that as part of its fundraising activities, the Tenant shall have the right to licence part of the Leased Premises to third parties without the Landlord's prior written consent, from time to time and on an ancillary basis provided that the licence term does not exceed thirty (30) calendar days and the predominant use of the Leased Premises remains consistent with the Use.

Tenant's Work:

The Tenant shall carry out state of good repairs and capital repairs required under the Accessibility for Ontarians with Disabilities Act ("A.O.D.A.") (collectively, the "Capital Repairs"), as required by the Landlord to its satisfaction, including without limitation, the Tenant's work as outlined in the Lease (the "Tenant's Work"). The Tenant's Work shall be in compliance with the Landlord's Fair Wage Policy, the Labour Trades Contractual Obligations in the Construction Industry Policy and the Construction Act (Ontario). The Tenant shall submit detailed invoices in connection with the Capital Repairs to be reviewed and paid by the Landlord when it deems appropriate. The Landlord will retain a ten (10) per cent construction lien holdback from any payment it makes to the Tenant and will subsequently release same in accordance with the Construction Act.

The Landlord agrees to contribute up to \$1,976,850 to the Tenant's project budget for base building and A.O.D.A. upgrades in accordance with the following payment schedule as agreed upon by the Tenant and the City.