

Below Market Rent Lease Agreement with Toronto Cat Rescue at 705 Progress Avenue, Unit 15, and Designation of the Premises as a Municipal Capital Facility

Date: February 16, 2023

To: General Government Committee

From: Executive Director, Corporate Real Estate Management and Executive Director, Municipal Licensing and Standards

Wards: 24 - Scarborough-Guildwood

SUMMARY

This report seeks to obtain Council authority for the City (the "Landlord") to enter into a lease agreement at below market basic rent (the "Lease") and a service agreement (the "Service Agreement") with Toronto Cat Rescue (the "Tenant"), for certain premises comprising approximately 2,031 square feet of space located at 705 Progress Avenue, Unit 15 (the "Leased Premises").

This report also seeks Council's authority for the adoption of the necessary by-law to designate the Leased Premises owned by the City and the Toronto District School Board as a Municipal Capital Facility, and to provide an exemption for municipal taxes and education taxes. The Municipal Capital Facility agreement authorized by the by-law will provide an exemption for the Leased Premises.

Municipal Licensing and Standards' Toronto Animal Services has been occupying the Leased Premises through an arrangement with Corporate Real Estate Management since October 1, 2012. The use of the Toronto Animal Services occupancy was to open the Feral Cat Recovery Centre as part of their Trap, Neuter and Return Program given its close proximity to Toronto Animal Services' East Spay-Neuter Clinic. Toronto Animal Services has worked with Toronto Cat Rescue to lead the operations of the Recovery Centre since March 2015.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management and the Executive Director, Municipal Licensing and Standards recommend that:

1. City Council authorize the City to enter into a lease agreement (the "Lease") at below market basic rent with Toronto Cat Rescue (the "Tenant") for the premises described as Unit 15, 705 Progress Avenue, Toronto as outlined in the attached Appendix B (the "Leased Premises") for a five year term, substantially on the terms and conditions set out in the attached Appendix A, with such other terms and conditions as may be acceptable to the Executive Director, Corporate Real Estate Management, and in a form acceptable to the City Solicitor.
2. City Council authorize each of the Deputy City Manager, Corporate Services, and the Executive Director, Corporate Real Estate Management, severally to execute the Lease and any related documents on behalf of the City.
3. City Council authorize the Executive Director, Corporate Real Estate Management, in consultation with the Executive Director, Social Development, Finance and Administration, to administer and manage the Lease including the provision of any amendments, consents, approvals, waivers, notices, and notices of termination, provided that the Executive Director, Corporate Real Estate Management may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction.
4. City Council authorize the Executive Director, Municipal Licensing and Standards to negotiate, enter into, execute and administer a service agreement with the Tenant substantially on the terms and conditions set out in this report from the Executive Director, Corporate Real Estate Management Services and Executive Director, Municipal Licensing & Standards, for Toronto Cat Rescue's provision of feral/stray/abused cat protection and control services at 705 Progress Avenue, Unit 15.
5. 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 the Tenant, with respect to the Leased Premises, comprising approximately 2,031 square feet, used for the provision of protection, regulation and control of animals; 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 service agreement is entered into, and (4) the date the Tax Exemption By-law is enacted.

6. City Council direct the City Clerk to give written notice of the Municipal Capital Facility By-law to the Minister of Finance, the Municipal Property Assessment Corporation, the Toronto District School Board, the Toronto Catholic District School Board, le Conseil scolaire Viamonde, and le Conseil scolaire catholique MonAvenir.

FINANCIAL IMPACT

The Lease

The City will be providing the Lease to the Tenant for approximately 2,031 square feet of space at a nominal basic rent of \$2.00 per annum net. The total opportunity costs of entering into this Lease over the five year term is approximately \$121,860 based on the rate of \$12 per square foot annually.

However, 705 Progress Avenue is jointly owned by the City and the Toronto District School Board (the "TDSB"), and operated by the City. The Operating Agreement dated January 2, 1997 between the City and TDSB requires the City to pay TDSB basic rent of one dollar per square foot for up to 10,000 square feet where said space is occupied by the City. For the purposes of the Lease, the TDSB has confirmed that the Leased Premises will be considered to be used and occupied by the City. As a result, the City is required to pay TDSB the sum of \$2,031 per year (equivalent to \$10,155 over the five year term). This sum will be flowed through and paid by the Tenant as a below market basic rent.

The Lease is net and carefree to the City, so all operating costs and maintenance related to the occupancy of the Leased Premises will be the responsibility of the Tenant as Additional Rent. Additional Rent is currently estimated to be \$12,003 plus Harmonized Sales Tax ("HST") per year based on a rate of \$5.91 (plus HST) per square foot.

Community Donations

The City receives donations from the community for animal protection and control services, and Toronto Animal Services has the ability to apply those donations toward the support of their Trap, Neuter and Return Program, which includes the Leased Premises. Therefore Toronto Animal Services may apply a portion of the donations received to the Additional Rent in support of the facilities operation, however this will not constitute a legal obligation on the City under the Lease, and the Tenant will be responsible for any remaining balance. These funds, anticipated at \$11,000 per annum, will be available in the Municipal Licensing & Standards Donation Fund, held in cost centre MS5047, and flowed directly to the City's operating budget for the Leased Premises.

Property Tax

Although properties owned by the City and the TDSB are exempt from taxation, Toronto Cat Rescue may be deemed a taxable tenant and the Leased Premises would therefore be subject to property taxation. The annual property taxes on the Leased Premises to be occupied by the Tenant are estimated at approximately \$3,291, comprised of a

municipal portion of \$1,926 and a provincial education portion of \$1,365, based on 2022 Current Value Assessment ("CVA") and 2022 tax rates.

As shown in Table 1 below, providing a property tax exemption for the Leased Premises will result in a net annual reduction in property tax revenue to the City of approximately \$1,926, representing the municipal portion of taxes that is currently payable and which will no longer be collected once the Leased Premises are designated as a Municipal Capital Facility. The provincial education portion of property taxes of \$1,365 will no longer be required to be remitted to the Province once the exemption for the Leased Premises takes effect.

Table 1: Financial Implication of Property Tax Exemption - 705 Progress Avenue, Unit 15

Location	Municipal Taxes	Education Taxes	Total Property Taxes
705 Progress Avenue, Unit 15 – 1901-05-2-810-04300	\$1,926	\$1,365	\$3,291
Total Amounts Payable if Exempt	\$0	\$0	\$0
Reduction in Municipal Tax Revenues			\$1,926
Reduction in Education Taxes Remitted			\$1,365

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial implications as identified in the Financial Impact section.

DECISION HISTORY

At its meeting on July 7, 8 and 9, 2015, Council authorized a Below-Market Rent Lease Agreement with Urban Cats Relief Inc. at 705 Progress Avenue, Unit 15.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.GM5.12>

COMMENTS

Background

Toronto Animal Services promotes and supports a harmonious environment where humans and animals can co-exist free from conditions that adversely affect their health and safety. Managing the feral cat population in the City is key to ensuring the cat population is controlled, cat welfare is improved and the public's health is supported by vaccinating sterilized cats against rabies.

Since 2012, the Leased Premises has been used as a recovery centre in line with Toronto Animal Services' Trap, Neuter and Return Program where stray, feral and abused cats were provided with health and neuter care along with a space to recover. Toronto Animal Services is a member of the Toronto Feral Cat Coalition (the "Coalition"), made up of a group of not-for-profit organizations, and has worked with

them since 2012 to provide animal protection and control services in parallel with the services run out of the Leased Premises.

The Tenant is a not-for-profit organization and Coalition member which has been leading the provision of animal protection and control services out of the Leased Premises since 2015. They have taken over this responsibility from Urban Cats Relief Inc., who was previously approved by City Council to provide these services in the Leased Premises. The Tenant is the only entity which can provide these services to protect and control the feral, stray and abused cat populations out of the Leased Premises. Toronto Animal Services has determined that the Tenant has the necessary resources and ability to provide these services.

Lease and Service Agreement Details

The Tenant currently works as a volunteer partner with Toronto Animal Services and in order to formalize this relationship between the Tenant and the City, staff seek City Council's authority for the City to enter into the Lease and Service Agreement. The Tenant is eligible to enter into a below market rent lease given its not-for-profit status, and because it is providing programs and services that the City would otherwise provide.

The Lease is to be net and carefree to the City. The Tenant will accept the space "as is" for a term of five years, and will be required to enter into a Service Agreement with Municipal Licensing and Standards. Both agreements will have a mutual default provision, requiring the Tenant to be in good standing with both.

The use of the Leased Premises will include the following:

- triage of large cat intakes by the Tenant or other Coalition member groups;
- temporary holding space for feral cats that have been, or are scheduled to be, spayed or neutered under the Trap, Neuter or Release Feral Cat program;
- monitoring, cleaning and feeding the cats;
- recording the date of entry and exit, origin, description, age and animal identification number for each cat;
- training sessions on feral cat management; and
- accepting and storage of food donations.

See Appendix A for a list of the major terms and conditions of the Lease.

The Service Agreement will further detail programs and services to be provided by the Tenant and formalize Toronto Animal Services' oversight of the Tenant and their eligibility for a below market rent lease. The Service Agreement will include requirements that the Tenant's services must meet in order to continue to use the space and Tenant reporting obligations on the work done. The City will also have the right to audit the Tenant to ensure compliance with the Service Agreement and have indemnity and insurance provisions to protect the City.

Municipal Capital Facility Designation

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.

Properties “owned and occupied” by a municipality or local board are exempt from taxation pursuant to section 3 of the Assessment Act. However, where a municipality or local board leases property that would normally be subject to taxation, this exemption does not apply.

Given that the space in question at 705 Progress Avenue is owned by the City of Toronto and the TDSB and leased to the Tenant, the Leased Premises are subject to taxation at commercial rates.

The property tax exemption on the space to be leased by the Tenant will only apply if City Council agrees to provide a tax exemption, by way of municipal capital facility agreement under Section 252 of the City of Toronto Act, 2006. Ontario Regulation 598/06 prescribes facilities respect to a facility used for animal protection purposes as eligible municipal capital facilities for the purpose of Section 252.

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

CONTACT

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SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

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ATTACHMENTS

Appendix A – Major Terms and Conditions of Lease

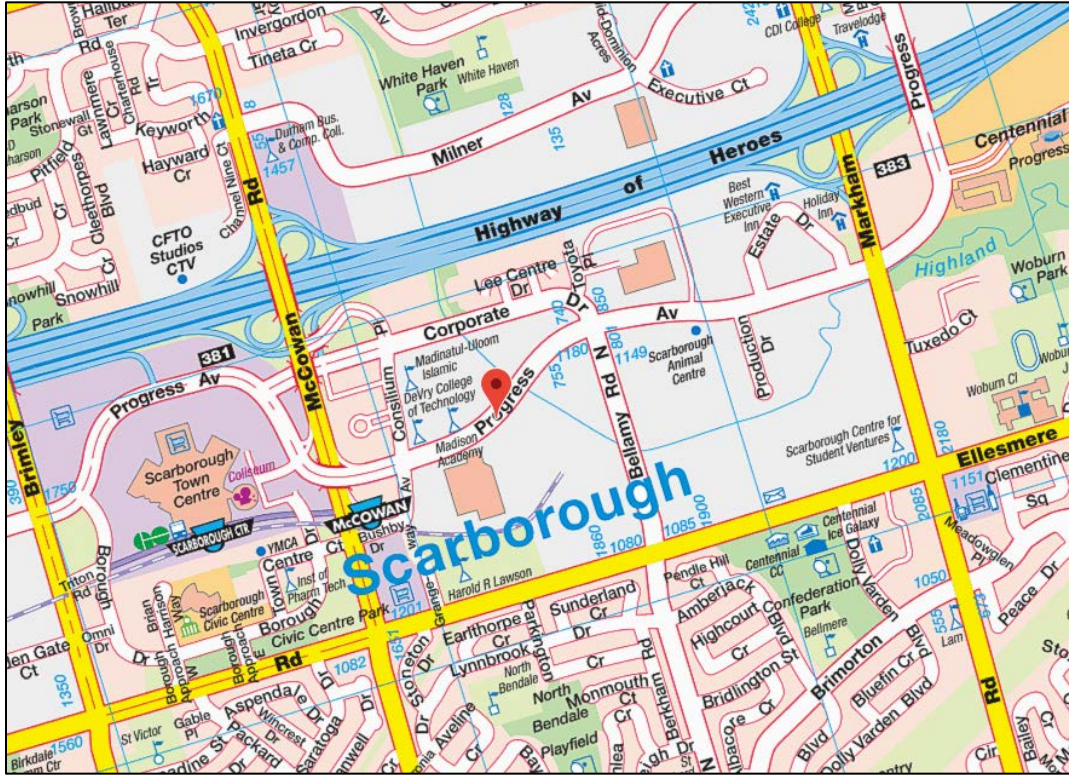
Appendix B – Location Map and Site View of Leased Premises

Appendix A – Major Terms and Conditions of Lease

Landlord:	City of Toronto
Tenant:	Toronto Cat Rescue
Leased Premises	705 Progress Avenue, Unit 15, comprising approximately 2,031 square feet in rentable area
Term:	5 Years
Commencement date:	June 1, 2023, or on such other date as determined by the Executive Director, Corporate Real Estate Management
Use:	<p>The Leased Premises shall be used and continually operated by the Tenant throughout the Term for the purpose of delivering support services for the protection, regulation and control of animals, specifically:</p> <ul style="list-style-type: none"> • triage of large cat intakes by the Tenant or other Coalition Member groups; • temporary holding space for feral cats that have been, or are scheduled to be, spayed or neutered under the Trap, Neuter or Release Feral Cat program; • monitoring, cleaning and feeding the cats; • recording the date of entry and exit, origin, description, age and animal identification number for each cat; • training sessions on feral cat management; and • accepting and storage of food donations.
Basic Rent:	\$2.00 per annum net
Operating Costs:	Estimated at \$12,003 plus Harmonized Sales Tax for the first year, based on the 2023 operating cost budgeted rate of \$5.91 per square foot gross. This is subject to annual reconciliations and budget adjustments as the Tenant is responsible for the actual operating costs.
Toronto District School Board Rent:	The Tenant shall pay \$2,031 per annum, based on a rate of \$1.00 per square foot plus all applicable taxes, to the Landlord to cover the required obligation on the Landlord to pay the TDSB's fee.
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. Capital improvements as defined under general accounting principles in accordance with Canada Revenue Agency's standards shall be the responsibility of the Landlord.
Service Agreement:	The Lease is subject to the Tenant entering into and remaining compliant with a Service Agreement with the City. The Service Agreement shall detail programs, services and/or uses by the Tenant, shall be administered by MLS and periodically monitored by MLS for compliance.
Early Termination:	The City 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) days' prior written notice.

Insurance:	Prior to the commencement of the Term and on an annual basis, the Tenant shall provide proof of insurance in accordance with the City'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 shall 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.
Assignment and Sub-leasing:	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.
Condition of Leased Premises:	The Tenant shall accept the Leased Premises in an "as is" condition.
Leasehold Improvements:	Any leasehold improvements undertaken by the Tenant shall be conditional on the Landlord's approval. All of the Tenant's leasehold improvements shall become the property of the Landlord at the Landlord's sole direction.

Appendix B - Location Map and Site View of Leased Premises



Lease with Toronto Cat Rescue at 705 Progress Avenue

