

Proposed Land Lease for the Somali Centre for Culture and Recreation

Date: June 4, 2024

To: Executive Committee

From: Executive Director, Corporate Real Estate Management

Wards: 2- Etobicoke Centre

SUMMARY

The purpose of this report is to provide an update to City Council on the non-binding discussions between CreateTO, City staff and the principals of the Somali Centre for Culture and Recreation (the "SCCR") regarding a proposed land lease (the "Land Lease") for a portion of City-owned 30 Mulham Place (the "Subject Property") and to obtain authority thereof. The Subject Property, also known as Buttonwood Park, is a 4.3 hectare (10.63 acres) park near Royal York Road and Eglinton Avenue West featuring an outdoor artificial ice rink (operating as tennis courts in the off-season), a children's playground, large open green space and mature trees.

At the direction of City Council, CreateTO, in consultation with City staff, and the SCCR have completed a feasibility study to identify potential sites for a proposed community centre and are recommending advancing the Subject Property as the site for the proposed development, which will serve the community as a whole, while providing a focus on serving the Somali community in particular.

The Somali community has been working for decades to identify a location in order to build a new community centre with the goal to address the gap in services available to the broader Somali community. The Subject Property provides a location near, and accessible to, much of Toronto's Somali population and can also be developed to service local community recreation needs. Through this opportunity, the City will require programs, services, and facilities that appeal to and be available to the broader public. This would be secured through a Community Access Agreement which will work as a companion document to the Land Lease. Equity deserving communities confront difficulties in terms of travel time to access vital services, a lack of recreational services, neighbourhood improvement projects, and affordable spaces for community and cultural events. The proposed community centre will be a valuable resource to improve vital services to all communities in the surrounding neighbourhoods.

RECOMMENDATIONS

The Executive Director of Corporate Real Estate Management recommends that:

1. City Council authorize the Executive Director, Corporate Real Estate Management, in consultation with the Chief Executive Officer, CreateTO, the General Manager, Parks, Forestry and Recreation, and the Executive Director, Social Development and Finance Administration, to negotiate and execute a nominal lease based on the terms and conditions outlined in Attachment 2 with the Somali Centre for Culture and Recreation to design, build, finance and operate a new not-for-profit community centre on a portion of 30 Mulham Place, as shown and outlined in Attachment 1, and on such other or amended terms and conditions as may be approved by the Executive Director, Corporate Real Estate Management, and in a form satisfactory to the City Solicitor.
2. City Council authorize the General Manager, Parks, Forestry and Recreation, in consultation with the Executive Director, Corporate Real Estate Management, the Chief Executive Officer, CreateTO, and the General Manager, Economic Development and Culture, to enter into a Community Access Agreement with Somali Centre for Culture and Recreation to accompany the lease authorized by Recommendation 1 above.
3. City Council direct the General Manager, Parks, Forestry and Recreation, in consultation with the Executive Director, Corporate Real Estate Management, the Chief Executive Officer, CreateTO, and the Executive Director, Social Development Finance and Administration, to engage with the impacted Councillor(s), to ensure that the Community Access Agreement is developed, based on community consultation, to best meet the needs of the local community.
4. City Council request the Chief Planner and Executive Director, City Planning, to commence and expeditiously advance an Official Plan Amendment to prepare a portion of 30 Mulham Place, as shown and outlined in Attachment 1, for disposal for the purposes of a long-term lease for a not-for profit community recreation centre.
5. City Council authorize the Executive Director, Corporate Real Estate Management, in consultation with the Chief Executive Officer, CreateTO and the General Manager, Parks, Forestry and Recreation to amend the term of the nominal ground lease authorized in Recommendation 1 of this report to 30 years, with two 10 year renewal options, following the completion of an Official Plan Amendment required to permit the disposal of a portion of 30 Mulham Place, as shown and outlined in Attachment 1.
6. City Council authorize the Executive Director, Corporate Real Estate Management to negotiate and enter into a nominal licence for a term of 24 months with the Somali Centre for Culture and Recreation to use up to 3 acres on a portion of the lands known as 30 Mulham Place for environmental, geological and other pre-construction investigations on terms and conditions satisfactory to the Executive Director, Corporate Real Estate Management, or their designate, and in a form satisfactory to the City Solicitor.

FINANCIAL IMPACT

The Land Lease will be provided for nominal rent and in accordance with the terms of the Land Lease, the SCCR will own the facility and be responsible for all costs, including development, construction, maintenance and operating costs, replacement costs, and property taxes, related to Subject Property. At the expiry or earlier termination of the Lease, the SCCR will surrender the Leased Lands and community centre to the City, or demolish the buildings and improvements on the Leased Lands in the condition in which they were received.

The estimated total opportunity cost of the Land Lease over the potential term of 21-years less a day is \$4,940,000 for up to 3 acres, based on a land value of \$2,000,000 per acre, and at an annual rental rate of five percent.

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

On April 17, 2024, City Council received a report from the Chief Executive Officer, CreateTO recommending that the City engage in a collaborative process with the Somali Centre for Culture and Recreation to support the identification of a viable site, details on site due diligence, the operational model, and the financial strategy. Motions on the report further directed staff to provide an overview of the milestones required to enter into a lease, and request to report back to Council on the status of lease negotiations.

<https://secure.toronto.ca/council/agenda-item.do?item=2024.EX13.4>

On July 19, 2022, City Council directed the General Manager Parks, Forestry and Recreation, the Executive Director, Social Development, Finance and Administration, and the Chief Executive Officer, CreateTO to work with the Somali Centre for Culture and Recreation Steering Committee in Toronto and the impacted Councillors to explore potential partnerships for a new community cultural and recreation centre. This included supporting a feasibility study that would identify a location and funding opportunities for this centre.

<https://secure.toronto.ca/council/agenda-item.do?item=2022.MM47.29>

COMMENTS

Background

The Somali Centre for Culture and Recreation (the "SCCR") is a registered nonprofit organization led by a group of Somali Canadian young professionals from across Ontario. Their goal is to create dedicated cultural recreation and community space for the Somali population in Toronto. According to the organization, there has been a 40-

year effort from the Somali community to develop a culture and recreation centre in Toronto to address the needs of this community which has culminated in the creation of this organization.

Site Selection

Guided by Council direction, staff from CreateTO, Parks, Forestry and Recreation, Social Development, Finance and Administration, and Economic Development and Culture began a process with the SCCR to better understand their request and work towards analyzing the feasibility of this idea. CreateTO, in consultation with Parks, Forestry and Recreation, led a site search based on a combination of requirements from the SCCR and the typical site requirements of new community recreation centres. Properties were further narrowed to areas with a higher proportion of Somali residents based on 2016 Census data and with site characteristics that would support the development of a community centre.

Most sites did not meet the minimum criteria due to size, irregularity of the lot, locations within the Toronto Region and Conservation Authority regulated area, and the presence of City infrastructure on the lands. A major caveat is that almost all City-owned lands are occupied by some pre-existing City use that would require additional due diligence to determine if a relocation is possible along with an associated funding source for relocation.

Over the past year, CreateTO, in consultation with Parks, Forestry and Recreation ("PFR"), worked collaboratively with the SCCR to review a few shortlisted sites to support the SCCR with their feasibility study of sites located within Toronto.

The recommendations on suitability were based on factors such as:

- physical fit for the Somali Centre;
- compatibility with surrounding land uses, complexity of planning approvals required;
- proximity to the Somali community and broader populations of African descent;
- proximity to transit;
- accessibility by walking and cycling; and
- potential for positive urban design impact.

Based on the outcomes of the feasibility study, informed by the site selection process, three sites were identified in Confidential Attachment 1 to the report from the Chief Executive Officer, CreateTO (April 17, 2024). Further due diligence work and investigation by CreateTO and the SCCR undertaken in May and June 2024 concluded the Subject Property as the site. The proposed community centre development will be further informed by the recently completed Somali Centre for Culture and Recreation Proposed 25 Year- Operating Plan Report, which was received on May 29, 2024 and is currently under review by staff.

Subject Property, and Key Terms of the Land Lease and Community Access Agreement

PFR acknowledges that the Subject Property's land use designation of Parks and Open Spaces in the Official Plan provides the opportunity for development of a community

recreation centre. PFR is supportive of the proposed Land Lease of a portion of the Subject Property to the SCCR in order to accommodate the community centre facility, provided that community access to recreational facilities and programming is secured as a condition of the Land Lease, and that the nature of the community access is subject to an engagement process with the impacted Councillor(s) and community. The terms of the Land Lease dictate that the SCCR's facility design and site plans are subject to review by PFR, in consultation with relevant City Divisions. It is important to note that any application for development on the Subject Property will also be subject to the development review process led by City Planning.

As further described in Attachment 1, the proposed community recreation centre will comprise of up to 3 acres on a portion of the Subject Property fronting Eglinton Avenue West, sufficient for the footprint of the proposed community centre facility. The Land Lease will require that existing park infrastructure will be unaffected by the construction and operation of the community recreation centre. PFR staff will work collaboratively with the SCCR on the finalization of design, construction management plans, and ongoing collaborative operations.

As directed by City Council, City staff have negotiated key terms and conditions of the Land Lease with the SCCR with a term of 20 years. The term of the Land Lease will commence within two years of execution, and milestone set out in the Land Lease provide dates by which the SCCR must advance approvals and construction of the community centre, which must be fully constructed and operational by April 2033. See Attachment 2 for all key terms and conditions of the Land Lease.

The Community Access Agreement will be executed prior to the commencement of the Land Lease and will require that a minimum of 50 percent of available time in the facility would be open, affordable and accessible to the general public. The Community Access Agreement will also set out the City's expectations with respect to the type of recreational amenities and programming available in the future community centre and to be determined through community consultation, which will be a process developed in consultation with the impacted Councillor(s).

Official Plan Amendment

The *Parks and Open Space Areas* designation prohibits development within *Parks and Open Space Areas* except for recreational and cultural facilities, conservation projects, cemetery facilities, public transit, and essential public works and utilities, where supported by appropriate assessment (Policy 4.3.2). Notwithstanding these permissions, the Official Plan provides that no City-owned lands in *Parks and Open Space Areas* and the Green Space System will be sold or disposed of (Policies 2.3.2.4 and 4.3.8), except where the City-owned land may be exchanged for nearby land of equivalent or larger area and comparable or superior green space utility.

Any extension to the Land Lease term for the Subject Property would be subject to an Official Plan Amendment. Included in this report is a recommendation for Council to request the Chief Planner to expeditiously advance an Official Plan Amendment in the event that the Land Lease terms are extended.

As is common with new developments, an amendment to the Zoning By-law may be required to permit the proposed community recreation centre and ancillary uses (such as parking). The requirement for an amendment to the Zoning By-law will not be known until detailed designs are prepared and submitted to the City as part of the standard development review process.

Future Considerations

City staff acknowledge that the proposed SCCR community recreation centre represents a monumental effort of community organizing and fundraising. These efforts will need to be sustained over the long-term to support a complex construction project and ongoing operations of the facility. If the SCCR's due diligence, fundraising, and community engagement results in options that could be accommodated on a smaller footprint, with a program that may not be consistent with the permitted uses in the Parks and Open Spaces, the City will work with the SCCR to identify other suitable locations that can be secured at nominal value for the purposes of developing a new facility.

City staff considers the proposed Land Lease with the SCCR to be fair and reasonable to both parties and recommends City Council authorize the Land Lease with the SCCR to develop and operate the Subject Property as community recreation centre.

CONTACT

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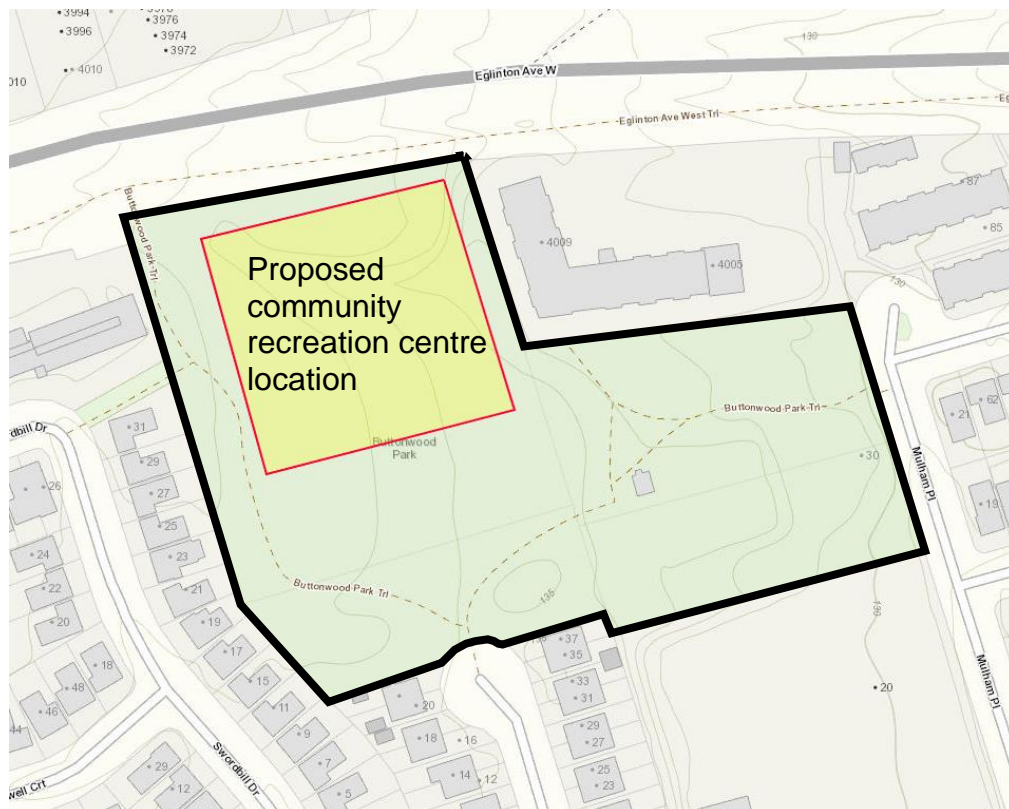
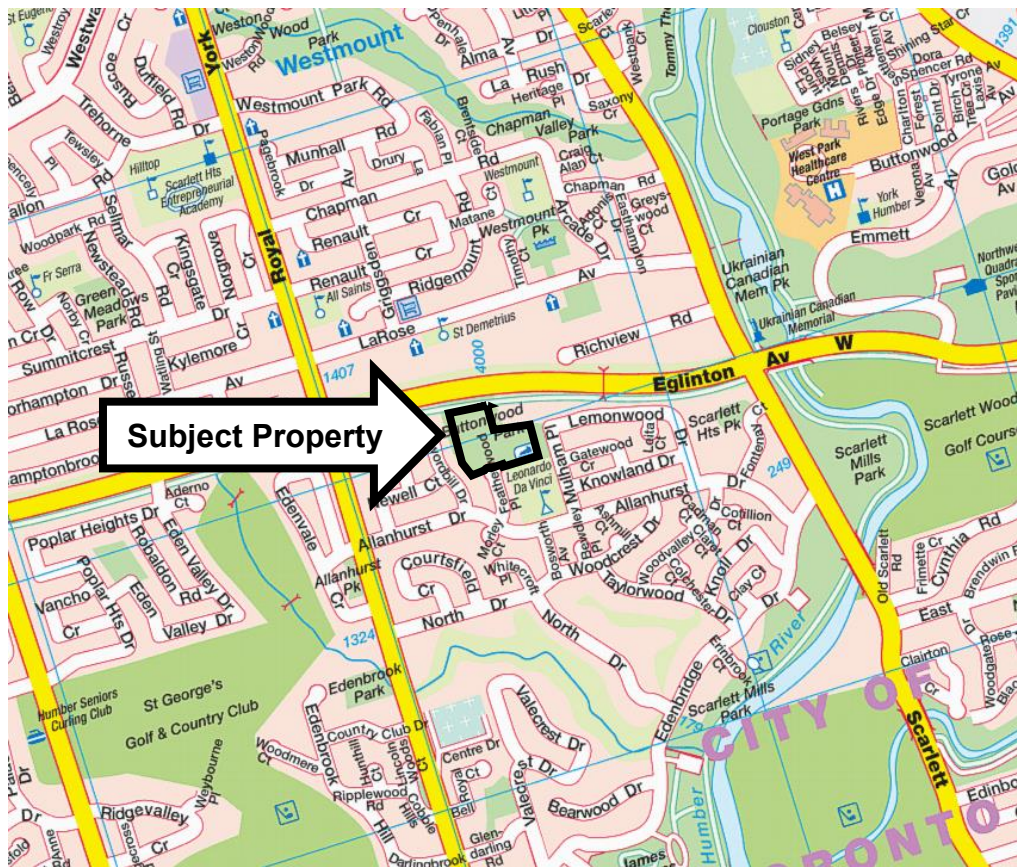
SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Attachment 1 - Location Map and Sketch of Subject Property
Attachment 2 - Terms and Conditions of Land Lease

ATTACHMENT 1 - LOCATION MAP AND SKETCH OF SUBJECT PROPERTY





ATTACHMENT 2 - TERMS AND CONDITIONS OF LAND LEASE

Landlord:	City of Toronto (the “City”).
Tenant:	Somali Centre for Culture and Recreation, a registered non-profit organization or charity, or a non-profit corporation wholly owned by Somali Centre for Culture and Recreation, for the purpose of operating the Community Centre. Tenant shall maintain its non-profit or charitable status throughout the Term.
Leased Lands:	Up to 3 acres on a portion of the lands municipally known as 30 Mulham Place also known as Buttonwood Park, as shown outlined in red on Attachment 1 of this report (the “Leased Lands”). The final location and size of the Leased Lands will be confirmed by written notice from the Landlord, after the final Community Centre concept design is approved by the Landlord. The Leased Lands are leased to the Tenant in an “as is” condition, including environmental condition, with no representations or warranties by the City as to its existing conditions.
Permitted Use:	<p>Leased Lands shall be used to construct and continuously operate a not-for-profit publicly accessible community recreation and cultural centre (the “Community Centre”) with a focus on programming specific to the Somali Community along with any other appropriate City and community uses, and for no other uses whatsoever, unless agreed to in writing by the Executive Director, Corporate Real Estate Management, in consultation with the General Manager, Parks, Forestry and Recreation.</p> <p>The Tenant acknowledges and agrees that the Community Centre will be designed and operated in compliance the Existing Official Plan Land Use Designation for this site permits Park, Community Centre, Library and Recreation Use</p>
Commencement Date:	The earlier of (i) the day that Tenant delivers written notice to Landlord completed the requisite testing and studies required to satisfy Tenant, in its sole discretion, that the Leased Lands are suitable for Tenant’s Permitted Use, and (ii) the two-year anniversary of the execution of the Lease (the “Commencement Date”).
Term:	21 years, less one day, commencing on the Commencement Date (the “Term”). During the term, the Community Centre shall be owned by the Tenant.

<p>Community Access Agreement:</p>	<p>A Community Access Agreement shall be entered into between the Tenant and the Landlord prior to the Commencement Date to detail the specifics of how public access and community programming will be operationalized and the type of recreational amenities that will be available at the Community Centre. The Community Centre shall be open to the public, 50% of the operating time.</p> <p>The terms of the Community Access Agreement relating to type of recreational amenities and community programming available at the Community Centre will be based on a community engagement process, jointly led by the City and Tenant and developed in consultation with impacted Councillor(s).</p> <p>Default of the Community Access Agreement shall be a default under the Lease.</p>
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<p>Construction/ Milestones:</p>	<p>Construction and uses on the Leased Lands shall be limited to a new Community Centre and ancillary space. All construction shall be subject to prior approval of plans and specifications by the Executive Director, Corporate Real Estate Management, in consultation with the General Manager, Parks, Forestry and Recreation, and such approvals are not to be unreasonably withheld and to be provided in a timely manner.</p> <p>The new Community Centre shall be completed and open for operations by April 1, 2033.</p> <p>The Tenant shall diligently proceed with and complete all development applications for and construction of the improvements on the Leased Lands in accordance with plans and specifications approved by the Executive Director, Corporate Real Estate Management in consultation with the General Manager, Parks, Forestry and Recreation. Without limiting the foregoing:</p> <ul style="list-style-type: none"> a) Tenant shall receive final approval of the Design Concept from the Landlord on or before November 1, 2026, so long as the Tenant has provided the appropriate documentation and information to the City on or before July 1, 2026; b) Tenant shall provide the City with information satisfactory to the City which demonstrates that the Tenant has secured funding commitments equalling 50% or more of the costs associated with the construction of the Community Centre, on or before the Commencement Date; c) Tenant shall secure all necessary planning approvals (including any necessary zoning bylaw amendments and Site Plan approval) for the Community Centre, on or before December 31, 2027; d) Tenant shall commence construction on or before April 1, 2029; e) Tenant to complete the Community Centre in accordance with plans and specifications approved by the Landlord, on or before April 1, 2033 (each a “Construction Deadline”, collectively the “Construction Deadlines”). <p>The Construction Deadlines are subject to Force Majeure.</p> <p>The Landlord shall have the right to terminate the Lease, without any compensation to the Tenant whatsoever, if Tenant does not meet any of the Construction Deadlines.</p>
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	<p>Prior to the commencement of construction, if any of the foregoing Construction Deadlines have not been met within one year of the stated date for such Construction Deadline by any reason other than Tenant delay, Force Majeure, or default by the Tenant of any of the terms and conditions of the Lease, the Tenant shall have the right to terminate the Lease, without any compensation to the Landlord whatsoever.</p> <p>The Tenant shall provide a construction schedule satisfactory to the Executive Director, Corporate Real Estate Management, to complete the Community Centre.</p>
Approvals / Consents / No Fettering City Council:	Nothing in this Term Sheet or the Lease derogates from, interferes with or fetters the Landlord's exercise of all of its rights and obligations as a municipality and planning approval authority (whether discretionary or mandatory), or imposes any obligations on the Landlord in its role as a municipality and planning approval authority. The Landlord shall not be prevented from or prejudiced in carrying out its statutory rights and responsibilities.
Basic Rent:	Base Rent during the Term will be equal to one dollar per annum.
Additional Rent:	<p>The Lease shall be completely net and carefree to the Landlord. Tenant shall be responsible for all taxes and costs whatsoever, current and future, including but not limited to realty taxes, any special assessments, harmonized sales tax, rental taxes, any eligible land transfer tax, operating costs, utilities, development charges, and all costs with respect to the Leased Lands, the Community Centre, and all construction, operation, repair, maintenance and replacement costs arising therefrom, including environmental remediation if required.</p> <p>The City will make reasonable efforts to attempt to secure a Municipal Capital Facilities Agreement for the Leased Lands, but a failure to do so, means that the Tenant will be responsible for all applicable property taxes charged. Landlord acknowledges that Tenant intends to seek exemption or 100 percent relief from any obligations to pay realty taxes, special assessments, or development charges.</p>
Net and Carefree Lease:	The Lease shall be completely net and carefree to the City, with the Tenant responsible for all taxes and all ongoing costs throughout the Term.

General and Capital Repairs, and Maintenance / Ongoing Operating Costs:	Tenant shall maintain, operate, and keep the Leased Lands and the Community Centre in good repair to a standard consistent with the building's age, and bear all costs associated with maintenance, repair and replacement and all required capital repair during the Term. This includes without limitation, all utilities, insurance, structural repairs, major repairs, and repair, maintenance and replacements to elevators, roofs, foundation, doors, windows and cladding, parking structures and surfaces, chillers, boilers, HVAC, etc. Notwithstanding the foregoing, the Landlord shall be responsible to rectify damage caused by the Landlord, its agents, or employees.
Building Condition Assessment (BCA) and Reserve Fund:	<p>Within two years of the commencement of operations of the Community Centre, a BCA and a Capital Plan of the Leased Premises will be conducted by an accredited professional and the BCA and Capital Plan will be updated every five years during the Term.</p> <p>The Tenant shall open a Reserve Fund Account and shall deposit sufficient funds to establish at the end of each lease year the annual amount required in the most recent BCA.</p> <p>The Tenant may withdraw amounts from the Reserve Fund Account to fund capital repairs.</p> <p>All amounts in the Reserve Fund shall revert to the Landlord absolutely at the end of the Term.</p>
Condition of Premises at Expiry or Earlier Termination:	At the expiry or earlier termination of the Lease, the Landlord and the Tenant shall agree, acting reasonably, for Tenant either to (i) surrender the Leased Lands and Community Centre to Landlord in good order, condition and repair, except for reasonable wear and tear consistent with the building's age or (ii) demolish the building(s) and improvements on the Leased Lands and surrender the Leased Lands in the condition in which they were received.
Insurance and Indemnity:	Tenant shall take out comprehensive insurance in the amounts and forms as required by the Executive Director, Corporate Real Estate Management, and shall release and indemnify the City for any injury, loss, damage, claims, costs and other proceedings whatsoever.

Construction Liens:	<p>If any construction lien is registered against the building or the Leased Lands by reason of work done or materials supplied for or to the Tenant or for or to anyone holding an interest in the lands through the Tenant or if the City is given notice of any such lien, the construction lien shall be discharged and vacated by the Tenant and the City shall be fully indemnified by the Tenant. If the Tenant fails to discharge or vacate any liens within the time periods set out in the Lease, the City may do so and may recover its costs as Additional Rent from the Tenant.</p>
Security for Construction Obligations:	<p>Prior to commencing construction, the Tenant shall:</p> <ul style="list-style-type: none"> a) provide evidence satisfactory to the Executive Director, Corporate Real Estate Management, of its financial capacity to complete construction of the Community Centre; and b) provide a 50% performance bond and 50% labour and materials bond to secure completion of construction of the community centre, with the Landlord and Tenant as obligees/beneficiaries, on terms and conditions acceptable to the Executive Director, Corporate Real Estate Management, to be delivered to the Executive Director, Corporate Real Estate Management on or before commencement of construction. Progress payments for construction of the community centre shall be monitored and verified by a quantity surveyor acceptable to the City, as certified by a project architect acceptable to the City.
Force Majeure:	<p>If the Landlord or the Tenant is, in good faith, delayed or prevented from doing anything required by the Lease because of a strike, labour trouble, materials or services not available, power failure, restrictive governmental laws or regulations, riots, insurrection, sabotage, rebellion, war, act of God, pandemics, such as COVID-19 and any public health or other order in respect thereof, unreasonable delay in municipal processing of development applications which may be required, the non-completion of site servicing including access roads to the boundaries of the Leased Lands and connection of utilities to the boundary of the Leased Lands in a manner adequate for Tenant to commence construction or for Tenant's use, or any other similar reason, that is not the fault of the party delayed, the doing of the thing is excused for the period of the delay and the party delayed will do what was delayed or prevented within the appropriate period after the delay. The foregoing does not excuse any delay caused by financial inability or excuse the Tenant from payment of amounts that it is required to pay, in the amounts and at the times specified in the Lease.</p>

Assignment / Transfer / Sublet:	The Tenant shall not assign, transfer or sublet ("Transfer") the Leased Lands, Community Centre or any part thereof, without obtaining the prior written consent of the Landlord, not to be unreasonably withheld. Any request for consent shall be delivered with sufficient information from the Tenant or the proposed transferee to enable the Landlord to assess the request. No assignment or sublease of substantially all of the Community Centre and/or Leased Lands for substantially all of the Term shall be effective until the proposed transferee has entered into an agreement, in a form satisfactory to the City Solicitor (a "Transfer Agreement"), whereby the proposed transferee expressly agrees to assume all of the obligations and liabilities of the Tenant.
Sale or Transfer by Landlord:	In the event of a sale or transfer of the Leased Lands by Landlord, Landlord shall obtain from the transferee an agreement to assume and to be bound by the covenants and obligations of the Landlord under the Lease.
Compliance with the Law and Applicable Policies:	Tenant shall at all times comply with all applicable laws, regulations and guidelines, and with all applicable City of Toronto policies, including but not limited to Workers' Rights, Fair Wage and Labour Trade Contractual Obligations in the Construction Industry, and Non-Discrimination Policies.
Information not Confidential:	Tenant acknowledges that the information, documents and correspondence provided by Tenant to Landlord (the "Tenant's Information") may be reproduced or otherwise copied by the Landlord, may become part of the public record of the transaction provided for in this Lease transaction, and consents to the disclosure of the Tenant's Information by the Landlord pursuant to the Municipal Freedom of Information and Protection of Privacy Act (Ontario) or otherwise, and to the extent as required by law.
Lease:	The City shall prepare the Lease on the City's standard form. This table contains the basic terms and conditions of the Lease. Supplementary terms and conditions shall be contained in the Lease, subject to negotiation and agreement by the Tenant. All documentation shall be in a form and content satisfactory to the City Solicitor.