



ADMINISTRATIVE REPORT

Report Date: June 27, 2017
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Meeting Date: July 11, 2017

TO: Vancouver City Council

FROM: General Manager of Community Services in consultation with the General Manager of Real Estate and Facilities Management

SUBJECT: Approval of new Sub-sublease Agreement to Non-Profit Operator for Childcare facility at 1399 Fountain Way (known as the "False Creek YMCA Childcare")

RECOMMENDATION

- A. THAT Council authorize the Director of Real Estate Services to negotiate and to execute a sub-sublease agreement with The YMCA of Greater Vancouver ("YMCA") as the tenant and operator of the childcare facility (the "Premises") situated on those lands legally described as *Parcel identifier: 007 281 285; Lot 50, False Creek, Plan 17420* (the "Lands") and having a civic address of 102-1399 Fountain Way on the following basic terms, and on terms and conditions consistent with the Term Sheet attached hereto as Appendix A, and otherwise satisfactory to the Director of Real Estate Services, the Director of Legal Services, and the Managing Director of Social Policy and Projects:

i) Term and Renewal Options:

- a. Term: five (5) years commencing September 1, 2017
- b. Options to Renew: Two options of five (5) years each, plus a further option of six (6) years and one month expiring September 29, 2038

ii) Rent:

Nominal base rent of Ten Dollars (\$10.00) for the term and any renewal term, payable in advance, plus applicable taxes.

Additional rent for common area maintenance of \$375.00 per month plus applicable sales taxes, payable monthly in advance on the first day of each and every month of the Term or any renewal term, subject to increases from time

to time which are commensurate with increases under the City's sublease (the "Sublease") of the Premises from The Wellington Society (the "Society").

The Rent for the Premises represents an annual operating grant in the amount of \$4,200 per year.

- B. THAT no legal rights or obligations be created or arise by Council's adoption of these Recommendations unless and until the sub-sublease is signed by the City and YMCA.

Recommendation A authorizes a grant and requires two-thirds affirmative votes of all Council members for approval.

REPORT SUMMARY

The current sub-sublease of the Premises from the City to the YMCA expires on August 31, 2017. This report recommends that the YMCA continue to operate a 25-space childcare facility in the Premises, and seeks Council authority to enter into a new sub-sublease agreement with the YMCA at nominal rent, and on terms set out herein.

Because the Sublease requires the City, as subtenant, to pay rent of \$725 per month, and the City is restricted from charging a sub-subtenant full market rent for the Premises, the difference between the \$725 per month that the City pays the Society and the \$375 per month it receives from the YMCA is deemed to be an annual operating grant of \$4,200 per year.

Well-established childcare operators in City-owned or controlled facilities (generally herein referred to as "City-owned" facilities) are typically permitted to enter into a lease term of five years, plus two additional five year renewal periods, for a total of 15 years. An additional six year renewal term is recommended for the sub-sublease of this facility, for a total of 21 years. Extending the sub-sublease term by an additional renewal period of six years and one month beyond the typical 15 years would align the term of the sub-sublease with the term of the Sublease (which will expire on September 30, 2038). This way, the City and the YMCA would not need to enter into a new six-year sub-sublease between 2032 and 2038.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Pursuant to Section 206(I) (a) of the Vancouver Charter, not less than two-thirds of all members of Council must approve a resolution for a grant to a charitable institution. The lease of City-owned property at less than market rent is considered to be a grant. As the proposed lease to the YMCA is for a nominal rent, it is therefore submitted to Council for approval.

On December 16, 2014, Council passed a motion to renew its commitment to childcare, along with a target to facilitate the creation of 1,000 new childcare spaces between 2015 and 2018.

On July 8, 2015, Council adopted the Healthy City Strategy. Actions on Goal #1: A Good Start aim to provide children with the best opportunities for a healthy life, including childcare as a cornerstone of healthy early child development.

REPORT

Background/Context

On April 26, 1979, the Lands were leased by way of ground lease from the City to the Wellington Society for purposes of constructing a non-profit housing project ("The Wellington") operated by the Society. The ground lease will expire in 2038. The Wellington is a non-profit housing project for children, families and seniors, operated by the Society.

On July 8, 1980, Council approved the City entering into the Sublease for the ground-floor childcare amenity space (ie. the Premises) in The Wellington. The Sublease is dated December 13, 2013 and will expire in 2038.

On February 3, 1981, Council approved rent and lease terms for a sub-sublease of the Premises to the False Creek Childcare Society.

On September 12, 1989, the YMCA took over as operator of the childcare facility within the Premises, as documented in a letter from the City's Children's Advocate to the YMCA.

On September 11, 2003, Council gave approval to enter into a new sub-sublease with the YMCA for the Premises. This was part of a broader Council report authorizing the lease, sublease, or license of 27 City-Owned capital assets to non-profit organizations.

On November 2, 2004, Council approved a Memorandum of Understanding between the City and the Society, and authorized the Director of Legal Services to amend and renew the Sublease on terms and conditions satisfactory to the Director of Legal Services.

Strategic Analysis

Childcare provides a significant social and economic benefit to the City, offering a sound basis for early childhood development and enabling labour force participation by parents. Childcare also plays a significant role in helping to meet the City's Healthy City Strategy goals, by reducing child vulnerability and ensuring school readiness for children; school readiness in turn is a key indicator of whether children will thrive in education, health and wellbeing later in life.

Recommendation for False Creek YMCA Childcare Tenant and Operator

Since 1989, the YMCA has been the operator for the False Creek YMCA Childcare. The YMCA has successfully fulfilled its role as tenant and operator of the childcare facility, providing quality childcare service to Vancouver children and families, and upholding responsibilities to maintain the good condition of the space.

The YMCA operates six City-facilitated childcares in Vancouver for 0-4 years, as well as 14 school-age care programs across the city for children 5-12 years. In 2016, the YMCA received \$151,017 in childcare operational and small capital grants from the City for one childcare centre and four school-age care programs across the city, to support program enhancement, affordability and access for vulnerable populations, and small capital improvements.

Implications/Related Issues/Risk

Financial

Terms of Lease

Recommendation A requests approval to enter into a nominal sub-sublease with YMCA. The Term Sheet outlining the key basic lease terms is attached as Appendix A.

Current City practice for a well-established non-profit childcare lease is to enter into an initial five (5) year lease term with two (2) further five (5) year renewal options for a total lease period of 15 years. As per Recommendation A, staff recommend the City and YMCA enter into this sub-sublease term with a further six-year renewal term, for a total term of 21 years. The additional six year renewal term will allow the sub-sublease between City and YMCA to expire at the same time that the Sublease expires, avoiding the need for the City and YMCA to enter into a further short-term 6-year sub-sublease in the future.

The childcare facility has been maintained in good condition since opening in 1980. A 2014 building condition report identified some areas of capital expenditures forecasted for approximately the years 2023 to 2024, in the range of roughly \$150,000 (in today's dollars). Beyond that, no significant planned repairs were projected for the duration of the sublease term in 2038. Under the ground lease, the Society is responsible for capital/life cycle replacement of and major repairs to the base building systems and structural components of the Premises (i.e. foundations, flooring sub-structure, building envelope and roof).

The YMCA is recommended as an organization with an excellent track record as tenant of this and other City-owned facilities.

The YMCA, as operator, will be responsible for all expenses related to utilities, communications (including internet, cable, and phone), security systems for the childcare, routine maintenance and minor repairs, janitorial, liability and contents insurance, and program operating and service delivery costs. The responsibilities of the parties regarding the maintenance, repair and replacement for the facility will be further detailed in a Service Level Agreement, which will be attached as a schedule to and form part of the sub-sublease.

This sub-sublease requires that the childcare facility program meet Provincial Community Care Facilities Licensing regulations, and operate at maximum capacity on a full time basis. YMCA will be required to provide documentation, as needed,

indicating that the programming of the space continues to fulfil public service objectives in alignment with City goals and mandates for childcare, including providing types of programs that meet family needs, provisions for priority enrolment to families residing or working in Vancouver and consideration of parent involvement in decision-making processes. These public service objectives and required documentation will be further detailed in a Public Service Operating Agreement, which may be attached as a schedule to and form part of the sub-sublease.

YMCA will be required to budget for an adequate maintenance reserve within its annual operating budget to meet its obligations in the sub-sublease, and ensure that financial accountability is adhered to through an annual reconciliation process outlined in the sub-sublease based on year-end actuals.

Budget Implications

This amenity space has been sublet by the City from the Society for the sole purpose of enabling a non-profit operator to offer childcare services at nominal rent, on a similar basis as other childcares located in City-owned space. Under the Sublease, the Society agreed to maintain the rent for this space at the greater of \$725/month, or the equivalent of recovery of costs incurred for basic operation of the space (including taxes, utilities and routine maintenance). Under the Sublease, if recovery costs for this space exceed \$725/month, the Society may notify the City and request additional rent to cover the cost of basic operations.

The City receives \$375/month from the YMCA as its share of these common area costs, as per the responsibilities outlined in the Service Level Agreement of the current sub-sublease. The value of a rental grant is typically calculated as the difference between market rental value of the premises, and the rent received. Since the City is restricted from charging a sub-subtenant market rent for these Premises, there is no current market value comparable for this space. As such, the grant in this case is calculated as the difference between what the City pays the Society as rent (\$725/mo) and what the YMCA pays the City (\$375/mo). The amount is \$350/month or \$4,200 per annum, which is considered to be a grant as noted in Recommendation A. The amount received by the City from the YMCA may be subject to change as operating costs for the facility increase over time.

For further clarity, should the rent for the Premises payable by the City to the Society under section 1.02 of the Sublease exceed \$8,700 per annum (\$725.00 per month) for any year of the Term or any renewal term, the additional rent payable by the YMCA to the City under the sub-sublease will increase commensurately by an amount equivalent to 51.7% of such excess.

CONCLUSION

Staff recommend that the YMCA continue to operate the False Creek YMCA Childcare at 1399 Fountain way, and that Council authorize entering into a new sub- sublease agreement with the YMCA on the terms and conditions set out in the report.

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BASIC LEASE TERMS FOR THE FALSE CREEK YMCA CHILD CARE FACILITY
AT
#102 - 1399 Fountain Way (the "Premises")
BETWEEN
THE CITY OF VANCOUVER (the "Sub-landlord")
AND
THE YMCA OF GREATER VANCOUVER (the "Sub-tenant")

Lease Term and Renewal Options

Initial term of five (5) years commencing September 1, 2017 and ending August 31, 2022 (the "Term"). Two (2) options to renew each for a term of five (5) years, with a further option to renew for a term of six (6) years and one month, expiring September 29, 2038.

Rent

Nominal base rent of Ten Dollars (\$10.00) for the term or any renewal term, payable in advance, plus applicable sales taxes.

Additional rent of \$375.00 per month plus applicable sales taxes, payable monthly in advance on the first day of each and every month of the Term or any renewal term, subject to increases from time to time commensurate with any increases under the sublease for the Premises between the Wellington Society and the Sub-landlord (the "**Sublease**"). For further clarity, should the rent for the Premises under section 1.02 of the Sublease exceed \$8,700 per annum (\$725.00 per month) for any year of the Term or any renewal term, the additional rent payable by the Sub-tenant under the sub-sublease shall increase by an amount equivalent to 51.7% of such excess.

Utility Charges

The Tenant will be responsible for any and all costs and obligations associated with metered utilities directly serving the Premises, including any municipal utility charges serving or associated with the Premises.

Operating Costs, Repairs and Maintenance

The responsibility for all costs, obligations and expenses related to the operation, regular repairs and routine maintenance, and any required preventative maintenance of the Premises, including the play area and its equipment, will be as set out in a Service Level Agreement to be attached to and forming part of the sub-sublease. Generally, the Sub-tenant will not be responsible for the cost of maintenance of the base building systems within or dedicated solely to the Premises. The Sub-tenant will be responsible for routine maintenance, regular repairs and operational costs of the childcare facility and ancillary rooms and areas within the Premises, including janitorial, utilities, pest control, and security services. The Sub-tenant will also be responsible for a portion of the allocated costs associated with utilities for the common areas of the Lands and building and the routine and preventative maintenance of the Lands and building, the cost of which are captured above as additional rent.

Capital/Life Cycle Replacement Costs

The responsibility for all capital/life cycle replacement costs associated with the Premises - for example, mechanical, electrical and plumbing systems and other capital costs including those associated with the building envelope, including roof membrane, wall membrane,

exterior painting, and any structural components of the building such as foundation and slab - will be as set out in a Service Level Agreement to be attached to and forming part of the sub-sublease and otherwise as specifically provided for in the sub-sublease, all on terms and conditions satisfactory to the Sub-sublandlord. In general, the Society as Head Tenant under the Ground Lease will be responsible for capital/life cycle replacement of and major repairs to the base building systems and structural components of the Premises (*i.e.* foundations, flooring sub-structure, building envelope and roof). Capital costs associated with the play yard and its equipment, as well as security systems serving the Premises shall be the Sub-subtenant's responsibility.

Insurance

The Sub-subtenant is responsible at all times for maintaining commercial general liability insurance and all risk (broad form) tenants' legal liability insurance, as well as insuring for equipment, trade fixtures, furniture and all other contents, in the amounts and types of insurance to the satisfaction of the Sub-sublandlord. The Sub-sublandlord will be named as additional insured on each and every policy.

Use

The Premises are to be used for the delivery of licensed child care programs on a full time basis. The Premises may also be used for support activities including but not limited to office, early care and learning programs for children from newborn to twelve (12) years of age, parenting and family development programs, and similar support activities on the condition that such does not interfere with the child care services requirements.

Public Service Objectives

The Sub-subtenant will use the Premises for the provision of licensed child care services and in a manner that benefits the citizens of Vancouver. The Sub-subtenant will be required to articulate and follow a set of *public service objectives* including minimum hours of operation; type and range of services; and its commitment to quality and accessibility in its programs and procedures.

Third Party Use

On condition that it does not interfere with the childcare service required under the provisions as described under the Use section herein, the Sub-subtenant may permit third parties to use the Premises, but only for the purpose of providing early childhood development and learning programs for children from the ages of twelve (12) down to newborns, as well as family development programs.

Assignment and Subleasing

The Sub-subtenant shall not assign its leasehold interest in the Premises or any portion thereof, and, other than as permitted by the Third Party Use section herein, the Sub-subtenant shall not be permitted to sublease the Premises or any portion thereof, save and except with the prior written consent of the Sub-sublandlord, which consent may be arbitrarily withheld.

Naming Rights

The sub-sublease will require the Sub-subtenant to follow the City's *Naming Rights Policy*, including potential restrictions on the right to name the Premises, (including any portion of the Premises).

Parking

There are no dedicated parking stalls associated with the Premises.

Early Termination by Tenant

The Sub-subtenant may terminate the sub-sublease upon (90) days' written notice if it intends to or has ceased to use the Premises for the permitted Use.

Early Termination by Landlord

The Sub-landlord may terminate the lease upon giving the Tenant not less than ninety (90) days' written notice of such termination if the Sub-landlord's elected council is not satisfied with the group childcare service provided by the Sub-subtenant.

Additional Lease Terms

All of the foregoing lease terms and all additional terms and conditions shall be as required by and be to the satisfaction of the Director of Legal Services and the Director of Real Estate Services in consultation with the Managing Director of Social Policy and Projects.