



ADMINISTRATIVE REPORT

Report Date: March 25, 2011
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VanRIMS No.: 08-2000-20
Meeting Date: April 21, 2011

TO: Standing Committee on City Services and Budgets

FROM: Director of Real Estate Services in consultation with the Managing Director of Cultural Services and the Directors of Facilities Design and Management, Planning, and Legal Services

SUBJECT: Option to Purchase 639 Commercial Drive (York Theatre) and Lease of 639 Commercial Drive to the Vancouver East Cultural Centre

RECOMMENDATION

- A. THAT Council authorize the Director of Real Estate Services to negotiate and execute an Option to Purchase Agreement, on terms and conditions satisfactory to the Directors of Real Estate and Legal Services, with 0843836 B.C. Ltd., (Incorporation No. BC0843836), (the "Owner/ Developer"), regarding the premises located at 639 Commercial Drive, legally described as Lots A and B of Lot 12, Block D, District Lot 183, Plan 3137, PID: 013-108-506 and PID: 013-108-514, respectively and PID: 013-108-531, Lot C, except part in Reference Plan 1808, of Lot 12, Block D, District Lot 183, Plan 3137, (as shown on Appendix A), providing the City with the exclusive and irrevocable right to acquire title in fee simple of the said lands and premises (the "York Theatre") for a nominal sum of ten dollars (\$10) upon completion of the renovation and restoration of the York Theatre by the Owner/Developer to the satisfaction of the Directors of Facilities Design and Management and Planning, and the Managing Director of Cultural Services and in accordance with a duly authorized Heritage Revitalization Agreement, and after issuance of occupancy permits for full occupancy and use thereof.
- B. THAT Council authorize the Director of Real Estate Services to negotiate and execute an Offer to Lease the York Theatre with the Vancouver East Cultural Centre (the "VECC"), a registered non-profit society, for use as a cultural/ performing arts centre for a term of sixty (60) years at a nominal rent of ten dollars (\$10), inclusive of rent in lieu of taxes, upon the terms and conditions described in Appendix B to this report, and upon such other terms and conditions as the Directors of Legal Services, Real Estate Services and Facilities

Design and Management and the Managing Director of Cultural Services may require or approve and such Offer to Lease will be subject to VECC providing the City, within four (4) months of the effective date of the Offer to Lease, with an updated business plan detailing the intended operating model for the York Theatre with a financial model related to program delivery and tenant capacity to address facility operating and capital costs. Following receipt of the business plan the City will have thirty (30) days in which to review and approve the business plan. In the event the City does not approve the business plan the Offer to Lease will be considered null and void and of no further force or effect.

- C. THAT Council authorize the Director of Real Estate Services, upon the City obtaining ownership of the York Theatre, and subject to the approval of the updated business plan of the VECC, pursuant to Recommendation B herein, to negotiate and execute a lease of the York Theatre with the VECC upon the terms and conditions set out in the Offer to Lease pursuant to Recommendation B hereof, and upon such other terms and conditions as the Directors of Legal Services, Real Estate Services and Facilities Design and Management and the Managing Director of Cultural Services may require or approve.
- D. THAT, with respect to Recommendation A, no legal rights or obligations will arise or be created until execution of the Option by the Owner/Developer and by the City through its authorized signatory, the Director of Real Estate Services;

FURTHER THAT, with respect to Recommendation B, no legal rights or obligations will arise or be created until execution of the Offer to Lease by VECC and by the City through its authorized signatory, the Director of Real Estate Services;

AND FURTHER THAT, with respect to Recommendation C, no legal rights or obligations will arise or be created until execution of the Lease by VECC and by the City through its authorized signatory, the Director of Real Estate Services.

Nominal rent leases are considered a grant and require eight (8) affirmative votes.

NOTE: Please see Companion Report RTS 08781 from the Director of Planning on the CD-1 Rezoning of 639 Commercial Drive and Heritage Designation of the York Theatre.

GENERAL MANAGER'S COMMENTS

The General Managers of Community and Business Planning and Services RECOMMENDS approval of the foregoing.

CITY MANAGER'S COMMENTS

The City Manager RECOMMENDS approval of the foregoing.

COUNCIL POLICY

2008 - 2018 Culture Plan

2008 - 2023 Cultural Facilities Priorities Plan

Section 206(l) of the Vancouver Charter, (not less than two-thirds of all members of Council must approve a resolution for a grant).

PURPOSE AND SUMMARY

The recommendations in this report, if approved by Council, provide for the negotiation, execution and registration of a legally binding Option to Purchase, between the City and the Owner/Developer, securing the right of the City to acquire, for the nominal amount of ten dollars (\$10), the fee simple interest in title to the York Theatre following acceptable completion of the renovation and restoration of the York Theatre by the Owner/Developer.

Additionally, the City will negotiate and execute an Offer to Lease with the VECC, regarding the York Theatre, requiring an updated business plan from VECC for the City's consideration. Upon approval by the City-staff team, comprised of representatives from Real Estate Services, Cultural Services, Financial Services and Facilities Design and Management, of the VECC updated business plan, and following transfer of the renovated and restored York Theatre to the City, a long term lease for (60 years), at a nominal rent, will be negotiated and executed with the VECC for the purpose of VECC operating the York Theatre as a cultural performing arts centre.

BACKGROUND

In September 2008 Council resolved that the exterior and interior of the York Theatre has heritage value meriting conservation. Council further resolved, in December 2008, to support the ongoing efforts to retain the York Theatre, and to support in principle a City contribution of up to 100% of capital costs to do so, subject to:

1. approval of total capital costs;
2. confirmation of a funding model including, but not limited to:
 - Transfer of density (including consideration of setting the value of the density at a higher rate);
 - Capital;
 - Property tax exemption;
 - Ownership arrangements (that the City be the ultimate owner of the property and enter into a long-term lease arrangement with the VECC).

This report addresses the proposed ownership arrangements and long term lease arrangement with the VECC.

A companion policy report RTS 08781 has been prepared by the Director of Planning for Council's consideration regarding the CD-1 rezoning of the York Theatre and heritage designation to permit renovation and addition to the York Theatre building, address the total capital costs, and confirm the proposed funding model including transfer of density and other capital contributions.

DISCUSSION

The development proposed for the York Theatre will require a rezoning of the lands. A Heritage Revitalization Agreement (HRA) between the Owner/Developer and the City will also be required to secure the rehabilitation and conservation of the York Theatre and to provide incentives to the Owner/Developer for said rehabilitation and conservation and for the transfer of the York Theatre to the City as a long-term community cultural amenity.

The Vancouver East Cultural Centre is a partner in the project who has been involved since its conception. In December 2008 when Council re-affirmed their commitment to the project, it was based on an operational viability model (in addition to a building restoration/development proposal) prepared by the VECC that ensured the viability of the project into the future. It is anticipated the VECC will occupy and operate the York Theatre for use as a cultural/ performing arts centre. As a component of the City's approval of VECC as the long-term tenant and operator of the York Theatre the City requires VECC to provide an updated business plan addressing both the operating model and the financial capacity of the VECC to address facility operating and capital cost commitments. This submission from the VECC will represent an update to the Business Plan and operational model that was accepted at the time of approval of the York Theatre restoration/development. An additional requirement of the VECC will be annual operating and capital expenditure plans and reports and the ability for the city to undertake inspections as needed to ensure that long term management and protection of the property is being realized.

Upon approval of the VECC updated business plan, and upon completion of the renovation and restoration of the York Theatre, anticipated to take approximately 2 years, the City will exercise its Option to Purchase and acquire a fee simple interest in the title to the York Theatre. Following transfer of the York Theatre to the City a long term (60 year) lease, at a nominal rent, will be entered into with VECC upon the terms and conditions described in Appendix B, and upon such other terms and conditions as the Directors of Legal Services, Real Estate Services and Facilities Design and Management and the Managing Director of Cultural Services may require or approve. If the City does not approve the VECC updated business plan staff will report back to Council.

The VECC is contributing \$1.8 million in capital funding to the project, and under the terms of the lease, will be responsible for all of the regular and ongoing maintenance and operating costs of the York Theatre, and a shared portion of the capital maintenance costs over the term of the lease as outlined in a Service Level Agreement (SLA) to be prepared by the City's Facilities Design and Management Department. The VECC will be required, through the long term lease, to report annually on its maintenance and capital plans and expenditures for the York Theatre and the City will retain the right of inspection of the York theatre to ensure the work is being carried out as agreed upon in the SLA.

The York Theatre is seen as a valuable cultural resource both for its historic significance to the cultural community and its anticipated future role in the City's cultural landscape. The restored York Theatre is planned to have 365 seats, filling an important gap in existing performance spaces in the City. Theatres in the 400 - 600 seat range, demand for smaller incubator spaces, improvements to existing under-capitalized performance spaces and opportunities for multi-tenant, multi-use spaces were all key gaps identified in the 2008 - 2023 Cultural Facilities Priorities Plan. Although the York Theatre is slightly smaller than the desired 400-600 seats, the quality of its spaces and the proposed restoration/redevelopment

will result in the creation of one of the premier spaces in the City and fill a void in the City's cultural space ecology.

Restoration and redevelopment of the York Theatre is environmentally sustainable. Likewise, operation of the York Theatre under the auspices of the VECC programs and services is anticipated to be operationally sustainable. VECC, located at the corner of Venables Street and Victoria Drive, is a long established cultural institution in the neighborhood with a well-developed vision and strong community support. It is run by a team of professional staff and an active board of directors. They have operated a 275-seat theatre for over 35 years in the midst of a residential neighborhood. In the fall of 2009, the Culture Lab performance space was added to the site at Venables Street and Victoria Drive. The Culture Lab has an adaptable seating plan, with a capacity of between 50 and 100, making it an ideal incubator space for emerging and innovative performers. The addition of the York Theatre to this group of performance spaces managed under the umbrella of the VECC makes for a complete range of 'small' theatres to accommodate planned arts programming and independent rentals.

Also valued is the York Theatre's location in the Commercial Drive neighborhood - a local neighborhood cultural district. The York Theatre is anticipated to strengthen the already solid reputation of Commercial Drive and benefit the local economy by further anchoring the cultural identity of the neighborhood and drawing visitors to the area.

FINANCIAL IMPLICATIONS

In consideration of Recommendation C, the City is granting the Vancouver East Cultural Centre a long-term lease at a nominal amount, inclusive of rent in lieu of taxes, for the term of the lease. Further, the VECC will be responsible for all maintenance and operating costs and a portion of the facility capital costs. As a result of the relationship model proposed by this report, the City will retain responsibility for the capital maintenance of the building envelope and main structural elements for the duration of the building's life. Funding for future capital maintenance work will be requested through the normal capital planning and budgeting process.

The York Theatre is being redeveloped under a Heritage Revitalization Agreement and acquired by the City as a long-term community cultural amenity; it will therefore be appropriately restricted in use to the delivery of cultural performing arts. As such, there is no foregone commercial rent attributable to the York Theatre when leased to a registered non-profit operator.

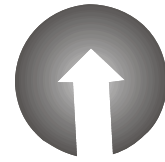
CONCLUSION

The Owner/Developer will be completing a full renovation and restoration of the York Theatre to the satisfaction of the Director of Planning and Managing Director of Cultural Services and in accordance with a duly authorized Heritage Revitalization Agreement. In consideration of the incentives provided to the Owner/Developer to undertake this project, the Owner/Developer agrees, upon completion, to transfer ownership of the York Theatre to the City as a long term community cultural amenity.

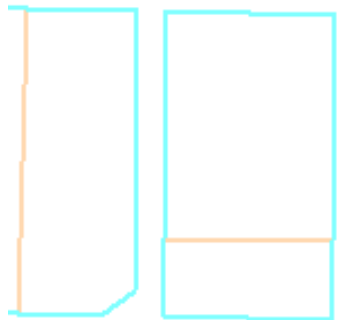
The City will secure the right to acquire ownership of the York Theatre, at a nominal amount, by the registration in the Land Titles Office of an Option to Purchase the York Theatre.

The City will enter into an Offer to Lease with VECC and pending receipt and approval of an updated business plan from the VECC will enter into a long term lease. Upon the transfer of ownership of the York Theatre to the City and City approval of the updated business plan, a long-term (60 year) lease will be granted to the VECC ensuring the York Theatre will be operated as a cultural performing arts centre for the benefit of the community for many years. A long-term arrangement with the VECC is advantageous as they are a well known and stable registered non-profit who have the capacity and expertise to program and maintain this valuable City asset over the long term.

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Commercial Drive



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**BASIC OFFER TO LEASE/LEASE TERMS FOR THE YORK THEATRE CULTURAL AMENITY SPACE
AT
639 COMMERCIAL DRIVE (The "Premises")
BETWEEN
THE CITY OF VANCOUVER (The "Landlord")
AND
THE VANCOUVER EAST CULTURAL CENTRE (The "Tenant")**

Lease Term

Commencement upon the later of ownership of the Premises by the Landlord, and execution of the Lease by the Tenant, for a term of Sixty (60) years.

Rent

Nominal rent of Ten Dollars (\$10), inclusive of rent in lieu of taxes, for the lease term.

Municipal Utility Charges

All Municipal Utility Charges serving the premises are payable by the Tenant.

Directly Metered Utilities

The Tenant will be responsible for any and all costs and obligations associated with metered utilities directly serving the Premises.

Operating Costs, Repairs and Maintenance

All costs, obligations and expenses related to the operation, regular repairs and routine maintenance, and any required preventative maintenance of the Premises will be the responsibility of the Tenant.

Capital Costs

The Tenant is responsible for all capital costs associated with the mechanical, electrical and plumbing systems and all other capital costs of any nature except capital costs associated with the building envelope, including the roof membrane, wall membrane, exterior painting, and any structural components of the building such as foundation and slab which are the responsibility of the Landlord.

Insurance

The Tenant is responsible at all times for maintaining commercial general liability insurance and all risk (broad form) tenants' legal liability insurance, as well as insuring the Premises (including all leasehold improvements, equipment, fixtures and furniture), in the amounts and types of insurance to the satisfaction of the Landlord. The Landlord will be named as additional insured on each and every policy.

Use

The Premises are to be used for the delivery of a performing arts cultural program, as approved by the Landlord from time to time, including making the Premises available for use by Vancouver-based cultural non profit organizations on both a long term or short term rental basis, (eg: individual night rentals and longer production or season rentals) and for limited commercial use, (earned revenue to support non profit activities). The Premises may also be used for support activities including but not limited to rehearsal/production, office, board/meeting/education, reference/research, box office, concession and similar support activities.

Public Service Objectives

The Tenant will use the Premises in a manner that benefits the citizens of Vancouver and the advancement of the performing arts. The Tenant will be required to articulate and follow a set of *public service objectives* including minimum hours of operation; type and range of services; and availability for community and public use.

Third Party Use

Other than as provided for herein the Lease will include a clause that restricts the Tenant's right to assign, sublet, grant a mortgage or license to another party, without advance written permission by the City.

Naming Rights

The Lease will require the Tenant to follow the City's *Naming Rights Policy*, including potential restrictions on the right to name the Premises, (including any portion of the Premises).

Termination

Upon demolition or destruction of the Premise, expiration of the term, expiration of any option renewal terms or failure to fulfil other material terms of the lease, the lease will terminate.

Additional Lease Terms

All additional terms and conditions as required by the Directors of Legal and Real Estate Services in consultation with the Managing Director of Cultural Services.

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