



REPORT

Report Date: February 21, 2020
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Meeting Date: March 10, 2020
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TO: Vancouver City Council
FROM: General Manager of Arts, Culture and Community Services
SUBJECT: Lease Extension and Modification Agreement for Kelly Court

RECOMMENDATION

- A. THAT Council authorize the Director of Legal Services to negotiate and execute, with the Metro Vancouver Housing Society ("MVHC") as the non-profit operator, one three (3) year lease extension and modification agreement (the "Lease Extension") for the Kelly Court facility ("Kelly Court") at 2929 Nootka Street, a building situated on lands legally described as PID 006906397; Lot 21 Block A Section 43 Town of Hastings Suburban Lands Plan 11660, on the following terms and conditions and as set out in the basic lease terms attached as Appendix A, and upon such other terms and conditions to the satisfaction of the General Manager of Arts, Culture and Community Services, General Manager of Real Estate and Facilities Management, Director of Finance and the Director of Legal Services:

Term and Renewals: One three (3) year extension to the remaining term of the lease;

Total Rent: Ten dollars (\$10.00) for the renewal term;

Form of Lease: The Lease is to be based on the City's standard form of lease for modifications for Non-Profit Housing (Nominal Rent).

- B. THAT no legal rights or obligations shall arise or be created by Council's adoption of Recommendation A unless and until all the required legal documentation is fully executed on terms and conditions to the satisfaction of the City's Director of Legal Services.

The proposed lease extension lease at a nominal rent, as set out in Recommendation A, constitutes a grant and requires an affirmative vote of two-thirds of Council members per Section 206(1) of the *Vancouver Charter*.

REPORT SUMMARY

This report recommends that Council authorize staff to enter into a modification agreement with MVHC as tenant, to extend the term of the existing lease by three (3) years, on the terms set out in this report.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Previous decisions on the premises were as follows:

- Lease to Metro Vancouver Housing Corporation for Kelly Court, dated March 28, 1979, and expiring on February 28, 2039.

GENERAL MANAGER'S COMMENTS

The General Manager of Arts, Culture and Community Services, recommends approval of the foregoing.

REPORT

Background/Context

Wholly owned by the Metro Vancouver Regional District, the Metro Vancouver Housing Corporation (MVHC) is a non-profit organization that supports diverse, mixed-income communities, primarily for families, seniors, and people with special housing needs. With 49 sites across the region, Metro Vancouver Housing provides over 3,400 units to support over 9,400 tenants. Specifically, MVHC operates Kelly Court, a 45 unit building located at 2929 Nootka Street that is 100% RGI and supports physically challenged residents and their families.

In 1979, the City entered into a 60 year lease with MVHC for the purposes of operating the Kelly Court facility (the Lease). The Lease was signed in 1979 with a 60 year term, resulting in an expiry date of February 28, 2039. Rent under the Lease was prepaid at \$160,000 to cover the full term.

MVHC has determined significant renovations are required for Kelly Court, and advised the City in April 2019, that they had been awarded a grant from the Canada Mortgage and Housing Corporation (CMHC) to fund this work. One of the key requirements to access this funding is that MVHC have a minimum 20 year post-renovation term remaining on the lease. The time remaining on the existing Lease is less than this 20 year minimum requirement.

In June 2019, The City entered into a confidential Letter of Intent with MVHC confirming the City's desire to work with MVHC to facilitate a modification to the leasing arrangement for the purposes of MVHC accessing CMHC funding to enable renovation work at Kelly Court.

Strategic Analysis

MVHC has indicated it is under certain timing pressures to formalize the funding from CMHC. So that MVHC can secure this CMHC funding to improve Kelly Court, staff determined a focused amendment of the Lease, to extend the term to provide the required 20 years post renovation, would be more expedient than negotiating an entirely new agreement. It was determined a minor three (3) year extension would ensure a sufficient term is in place to meet CMHC requirements.

As the work being contemplated at Kelly Court consists primarily of exterior envelope restoration, existing residents will generally not be impacted by the work. MVHC staff have met with residents, caregivers and family supports to advise them of this project and solicit input regarding an improved community garden at the conclusion of the project. As Kelly Court is a 100% rent geared to income building, all tenant rents are based on annual income and asset reviews, and will not face increased housing charges as a result of the building improvements.

Financial Implications/Related Issues

For this three year term extension, staff recommend basic rent be set at a nominal rate. This recommendation is based upon the high level of affordability at this site, with 45 units having an average rent of approximately \$575, which would be affordable to incomes of \$23,000. Nominal rent is also recommended as this extension is being sought in order to secure CMHC funding with which to facilitate significant renovations to the Kelly Court building. The estimated value of the land lease is approximately \$200,000 per year, or \$600,000 for the 3 year extension. The below market lease constitutes a grant and approval requires eight affirmative votes of Council, per Section 206(1) of the *Vancouver Charter*.

Consistent with Council policies, all affordable housing projects are expected to be self-sustaining over the life of the project where rents are set at levels that will cover mortgage payments, operating costs and capital replacement; and do not require further operating subsidies, property tax exemptions, and/or financial guarantees from the City.

CONCLUSION

MVHC has a proven track record in supporting diverse, mixed-income communities. As this proposed three (3) year extension of term is being sought to facilitate significant renovations to the facilities at Kelly Court, this will ensure the 100% RGI spaces for physically challenged residents are maintained for the long term.

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Appendix A: Proposed Modification of Lease Agreement

TERMS OF INSTRUMENT - PART 2

THIS MODIFICATION OF LEASE is dated for reference as of December 1, 2019 (the "**EFFECTIVE DATE**").

WHEREAS:

- A. It is understood and agreed that this instrument shall be read as follows:
- (i) the Transferee, Metro Vancouver Housing Corporation, is called the "**LESSEE**";
 - (ii) the Transferor, City of Vancouver, is called the "**LESSOR**"; and
 - (iii) the Transferee, Metro Vancouver Regional District, is called the "**GUARANTOR**";
- B. The LESSOR is the registered owner of lands and premises situate in the City of Vancouver legally known and described as:
- Parcel Identifier: 006-906-397
Legal Description: Lot 21 Block A Section 43 Town of Hastings Suburban Lands Plan 11660
(the "**SAID LANDS**");
- C. The LESSEE is wholly under the control of the GUARANTOR;
- D. The LESSEE is the tenant of the SAID LANDS pursuant to a LEASE dated March 28, 1979 registered in the Vancouver Land Title Office on June 4, 1979 under No. BB316622 (the "**LEASE**"); and
- E. The LESSOR, LESSEE and GUARANTOR have agreed to modify the LEASE as set out herein, which modification has been approved by resolution of the City of Vancouver Council dated [REDACTED], 2019. Among other things, the parties have agreed to extend the term of the LEASE for a period of three (3) years; and
- F. The word "**BUILDINGS**" and referred to in this Agreement has the meaning set out in the LEASE.

NOW THEREFORE THIS AGREEMENT WITNESSES that, in consideration of the mutual covenants set out herein and for other good and valuable consideration passing among each party to the others, the LESSOR, LESSEE and GUARANTOR hereby agree to modify the LEASE as follows:

1. Provided that the LESSEE is not, as of the EFFECTIVE DATE, in breach of any of its obligations under the LEASE, the term of the LEASE shall be extended for an additional term of three (3) years so that, subject to the terms and conditions of this agreement, the term of the LEASE will expire at 11:59pm on February 28, 2042, (the period between the existing expiry date of the existing TERM of the LEASE (the "**INITIAL TERM**"), being

11:59pm February 28, 2039 and the extended expiration of the TERM, being 11:59pm on February 28, 2042, is collectively the “**ADDITIONAL TERM**”).

2. The BASIC RENT for the ADDITIONAL TERM shall be Ten Dollars (\$10.00) payable in advance on the EFFECTIVE DATE.
3. As of the EFFECTIVE DATE, the LEASE is hereby further modified by:
 - (a) adding the following environmental provisions of Article XXIX of the LEASE:

“Section 29.01 – Definitions.

For purposes of this Article XXIX:

- (a) “**Contaminants**” means any pollutants, contaminants, deleterious substances, underground or aboveground tanks, asbestos materials, urea formaldehyde, dangerous substances or goods, hazardous, corrosive or toxic substances, special waste or waste of any kind or any other substance which is now or hereafter prohibited, controlled or under Environmental Laws; and
- (b) “**Environmental Laws**” means any statutes, laws, regulations, orders, bylaws, standards, guidelines, permits and other lawful requirements of any governmental authority having jurisdiction over the SAID LANDS and BUILDINGS now or hereafter in force relating in any way to the environment, health, occupational health and safety, product liability or transportation of dangerous goods, including the principles of common law and equity.

Section 29.02 - LESSEE’S Covenants and Indemnity.

The LESSEE covenants and agrees as follows:

- (a) not to use or permit to be used all or any part of the SAID LANDS or BUILDINGS for the sale, storage, manufacture, disposal, handling, treatment, use or any other dealing with any Contaminants, without the prior written consent of LESSOR, which may be arbitrarily or unreasonably withheld. Without limiting the generality of the foregoing, the LESSEE shall in no event use, and does not plan or intend to use, any Contaminants in a manner that, in whole or in part, would cause the SAID LANDS or BUILDINGS, or any adjacent property to become a contaminated site under Environmental Laws. Notwithstanding the foregoing and without limiting any of the LESSEE’s obligations under the LEASE, the LESSOR acknowledges that the SAID LANDS and/or BUILDINGS contain Contaminants, specifically asbestos and lead (the “Specified Contaminants”), and that for the purposes of this subsection only, the LESSOR shall permit the temporary storage, disposal, handling, treatment, use and dealing with the Specified Contaminants by the LESSEE to the extent required to remediate the SAID LANDS and/or BUILDINGS;

- (b) to strictly comply, and cause any person for whom it is in law responsible to comply, with all Environmental Laws regarding the use and occupancy of the SAID LANDS and BUILDINGS;
- (c) to promptly provide to the LESSOR a copy of any environmental site investigation, assessment, audit or report relating to the SAID LANDS or BUILDINGS conducted by or for the LESSEE at any time before, during or after the term of this LEASE, or any renewal or extension thereof. The LESSEE hereby waives the requirement for the LESSOR to provide a site profile for the SAID LANDS pursuant to the *Environmental Management Act* (British Columbia), any regulations enacted pursuant thereto, or any similar or successor legislation;
- (d) to maintain all environmental site investigations, assessments, audits and reports relating to the SAID LANDS or BUILDINGS in strict confidence and not to disclose their terms or existence to any third party (including without limitation, any governmental authority) except as required by law, to the LESSEE's professional advisers and lenders on a need to know basis or with the prior written consent of the LESSOR, which consent may be unreasonably withheld;
- (e) to promptly provide to the LESSOR on request such written authorizations as the LESSOR may require from time to time to make inquiries of any governmental authorities regarding the LESSEE's compliance with Environmental Laws;
- (f) to promptly notify the LESSOR in writing of any release of a Contaminant or any other occurrence or condition at the SAID LANDS, or any adjacent property which could contaminate the SAID LANDS or the BUILDINGS or result in the non-compliance of the SAID LANDS or BUILDINGS with Environmental Laws, or subject the LESSOR or the LESSEE to any fines, penalties, orders, investigations or proceedings under Environmental Laws; Notwithstanding the foregoing and without limiting any of the LESSEE's obligations under the LEASE, the LESSOR acknowledges that the adjacent lands have been or continue to be used as a gas station and /or an auto repair shop, which uses may have resulted or continue to result in the release of Contaminants onto the SAID LANDS.
- (g) on the expiry or earlier termination of this LEASE or at any time if requested by the LESSOR or required by any governmental authority pursuant to Environmental Laws, to remove from the SAID LANDS or BUILDINGS all Contaminants, and to remediate any contamination of the SAID LANDS or any adjacent property resulting from Contaminants, in either case brought onto, used at, created upon or released from the SAID LANDS by the LESSEE or any person for whom it is in law responsible. The LESSEE shall perform these obligations promptly at its own cost and in accordance with Environmental Laws. All such Contaminants shall remain the property of the LESSEE, notwithstanding any rule of law or other provision of this LEASE to the contrary and notwithstanding the degree of their affixation to the SAID LANDS or BUILDINGS; and

- (h) without limiting the generality of ARTICLE XVII to indemnify the LESSOR and its employees, agents, successors and assigns, from any and all liabilities, actions, damages, claims, remediation cost recovery claims, losses, costs, orders, fines, penalties and expenses whatsoever (including all consulting and legal fees and expenses on a solicitor-client basis and the cost of remediation of the SAID LANDS and BUILDINGS and any adjacent property) arising from or in connection with:
- (i) any breach of or non-compliance with the provisions of this Article by the LESSEE; or
 - (ii) any release or alleged release of any Contaminants at or from the SAID LANDS related to or as a result of the use an occupation of the SAID LANDS and BUILDINGS by, or any act or omission of the LESSEE or any person for whom the LESSEE is responsible at law.

The obligations of the LESSEE under this Article shall survive the expiry or earlier termination of this LEASE. The obligations of the LESSEE under this Article are in addition to, and shall not limit, the obligations of the LESSEE contained in other provisions of thisLEASE.”

4. Nothing contained or implied in this Agreement will derogate from the obligations of the LESSEE or GUARANTOR under any other agreement with the LESSOR or prejudice or affect the LESSOR’s rights, powers, duties or obligations in the exercise of its functions pursuant to the *Vancouver Charter* as amended from time to time and the rights, powers, duties and obligations of the LESSOR under all public and private statutes, by-laws, orders and regulations, which may be as fully and effectively exercised in relation to the SAID LANDS or BUILDINGS as if this Agreement had not been executed and delivered by the LESSEE, LESSOR and GUARANTOR.
5. Words herein importing the singular number or the masculine gender only shall include more persons, parties or things of the same kind than one, and females or corporations as well as males, and the converse whenever the context requires.
6. This Agreement as of from the date hereof be read and construed along with theLEASE and treated as part thereof. The LEASE, as hereby modified, will continue to be in full force and effect and otherwise unamended and the LESSOR, LESSEE and the GUARANTOR confirm and ratify the LEASE as hereby modified. Without limiting the generality of the foregoing, nothing in this Agreement limits, modifies or affects the obligations and covenants (including, without limitation, the obligations and covenants to pay BASIC RENT and ADDITIONAL RENT for the TERM) of the LESSEE in the LEASE to the LESSOR which obligations are hereby ratified and confirmed.
7. Unless otherwise defined herein, all capitalized words shall have the meanings given to them in the LEASE.

IN WITNESS WHEREOF the parties have executed this Agreement by signing the General Instrument Part I which is a part hereof.

END OF DOCUMENT