



COUNCIL REPORT

Report Date: June 19, 2023
Contact: Jerry Evans
Contact No.: 604.873.7430
RTS No.: 15669
VanRIMS No.: 08-2000-20
Meeting Date: June 27, 2023
[Submit comments to Council](#)

TO: Vancouver City Council
FROM: General Manager of Real Estate, Environment & Facilities Management ("REFM")
SUBJECT: Authorization to Negotiate a Development Agreement and Ground Lease with Fraser Academy Association at 2294 West 10th Avenue

Recommendations

- A. THAT Council authorize the Director of Real Estate Services to negotiate and execute a development agreement ("Development Agreement" or "DA") with the Fraser Academy Association ("Fraser Academy" or "FA") for City-owned premises located at 2294 West 10th Avenue, legally described as: PID 023-150-645, Lot 2, Block 363, District Lot 526, Group 1, New Westminster District, Plan LMP24360, (the "Premises", as noted in Appendix A) on the terms set out herein, which, subject to satisfaction of the pre-conditions described in Appendix B (the "Ground Lease Pre-Conditions"), shall provide for the granting of a ground lease at a nominal value in accordance with Recommendation B.

- B. THAT Council direct and authorize the Director of Real Estate Services to negotiate and, subject to satisfaction of the Ground Lease Pre-Conditions described in the DA and Appendix B, execute a nominal \$100 pre-paid ground lease of the Premises to Fraser Academy (the "Ground Lease") for a minimum sixty (60) years (the "Initial Term"), including two conditional options to renew of twenty (20) and nineteen (19) years respectively (the "Renewal Options"), to allow for redevelopment of the Premises into an expanded institutional project including both a day school program and childcare functions (the "Project") for long-term use as an educational centre for dyslexia and community literacy;

FURTHER THAT, pursuant to Section 206(1)(j) of the *Vancouver Charter*, City Council deems Fraser Academy to be an organization that is contributing to the culture, beautification, health or welfare of the city;

AND FURTHER THAT as the rent for the Ground Lease will be below the applicable market rate and includes payment-in-lieu of property taxes, Recommendation B constitutes a grant valued at approximately \$27.5 million,

inclusive of the Initial Term and all Renewal Options, if exercised, and requires a 2/3 affirmative vote of all Council members, pursuant to Section 206(1) of the *Vancouver Charter*.

- C. THAT the terms and conditions of the Development Agreement and Ground Lease are to be drawn to the satisfaction of the General Manager of REFM, General Manager of Arts, Culture & Community Services (“ACCS”) and Director of Legal Services, it being noted that no legal rights or obligations shall be created or arise by Council’s adoption of Recommendations A and B unless and until the Development Agreement and Ground Lease have been executed and delivered by all parties.

Purpose and Executive Summary

This report is recommending that Council authorize the Director of Real Estate Services to negotiate and execute a Development Agreement (“DA”) and, subject to satisfaction of all Ground Lease Pre-Conditions of the DA, a minimum sixty (60) year Ground Lease with the Fraser Academy. These agreements will allow for redevelopment of the City-owned site currently occupied by Fraser Academy into an expanded institutional project including day school programs focusing on dyslexia and community literacy and childcare functions (the “Project”). On July 6, 2021, Council approved a Letter of Intent (the “LOI”) which provided the Ground Lease Pre-Conditions noted herein, the satisfaction of which would authorize staff to bring forward a Ground Lease for approval at that time. Due to the legally non-binding nature of the LOI, the Fraser Academy have experienced certain challenges fundraising equity for the Project. Accordingly, to assist Fraser Academy with its fundraising efforts, Staff are recommending Council authorize negotiation and execution of a legally-binding DA which would obligate the City to enter into the Ground Lease upon satisfaction of all Ground Lease Pre-Conditions.

Council Authority/Previous Decisions

- In 1996, Council approved a lease of the Premises to the Fraser Academy for an initial term of 15 years with a 15 year renewal option;
- At its In Camera meeting on March 9 and 10, 2021 (RTS 14179), Council directed the Director of Real Estate Services to negotiate and report back for Council approval a five (5) year lease extension to July 16, 2030 with Fraser Academy and further, to negotiate to the satisfaction of the Director of Legal Services and GM of ACCS an LOI for Council approval which would provide for a subsequent minimum 60 year ground lease of the Premises to Fraser Academy, upon satisfaction of various pre-conditions;
- At its Regular meeting on July 6, 2021 ([RTS 14580](#)), Council authorized a grant and that the Director of Real Estate Services to execute a five (5) year nominal lease extension with the Fraser Academy (the “Lease Modification”), expiring July 16, 2030 (the “Termination Date”) and Council approved an LOI between the City and Fraser Academy setting out the terms by which the City would grant a minimum sixty (60) year Ground Lease of the Premises to Fraser Academy, plus two conditional options to renew of twenty (20) and nineteen (19) years respectively, to allow for redevelopment of the Premises into the Project.

Further, Council instructed that the Public Benefit Plan provided as a pre-condition for the Ground Lease include an outline of how the Project could support access for an increased percentage of the student body from families who can’t afford the tuition, and/or a

combination of an increased total number of students on reduced tuition and a deeper reduction in tuition for those families experiencing financial barriers in particular households from equity deserving communities (i.e. Indigenous, racialized, and students with other disabilities), in recognition of the significant public subsidy that a nominal long-term ground lease represents.

City Manager's Comments

The City Manager concurs with the foregoing recommendations.

Context and Background

In 1995, as a condition of rezoning of the Molson Arbutus Industrial Lands, the Premises were conveyed to the City. The Premises are held in the City's Capital Fund and Fraser Academy was permitted to remain in occupation as a tenant pursuant to a lease with the City (noted below).

Fraser Academy is an independent, non-profit, non-denominational school (grades 1-12) emphasizing formal education services for children with dyslexia and language-based learning differences, and it has occupied the building at this site since the mid-1980's. The services provided by Fraser Academy are responsive to critical gaps in the public education system.

In 1996, Council approved a lease and the City and FA subsequently entered into such lease for nominal rent for an initial term of 15-years commencing July 17, 1995, plus one 15-year renewal option, for a total term of 30 years (the "Lease"). In 2010, the Lease was renewed for the 15-year renewal term, expiring on July 16, 2025.

In April 2020, the City conducted a building condition assessment, indicating approximately \$3.5M in repairs/recapitalization costs were anticipated for main building systems over the next 6 years. With the existing school building and improvements reaching end of life and redevelopment necessary to see optimum use of the site, FA submitted a formal request to the City in July 2020 seeking a new long-term lease of the Premises at nominal rent, to enable redevelopment of the Premises including a new facility for the Fraser Academy school. FA communicated that it had outgrown the existing facility and needed to secure a new lease of the Premises immediately to begin a multi-year capital campaign to construct a new school, with capacity for 500 students.

In March 2021, after considering alternative site use/redevelopment options presented by City Staff, Council supported FA's request for a long-term lease of the Premises to provide for its redevelopment of the site into an expanded institutional project including a day school program focusing on dyslexia, community literacy and childcare functions. Further, at Council's In Camera meeting on March 9 and 10, 2021 (RTS 14179) and as set out in the LOI, Council recognized the unique benefit FA's programs provide to children with specific language-based learning disabilities (FA's particular focus being dyslexia, acknowledging that such children are represented as part of a marginalized group), including children that are represented in vulnerable, at-risk and equity seeking populations and pursuant to Section 206(1)(j), Council deemed FA to be an organization that is contributing to the culture, beautification, health or welfare of the city.

City staff were authorized to negotiate an LOI with Fraser Academy (as noted in Appendix C), which set out the pre-conditions upon which the City would grant FA a long-term Ground Lease,

in addition to a 5-year extension of their Lease to July 16, 2030 (the “Lease Modification”) to provide sufficient time for FA to plan for its potential expansion and to satisfy the LOI pre-conditions for a Ground Lease. On July 6, 2021, Council approved the terms of the LOI and the Lease Modification. Subsequently, the City and FA entered into the Lease Modification that extended the term of the Lease for an additional five years, with the Lease expiring on July 16, 2030.

Discussion

The approved LOI terms between the City and FA capture Council’s intention to provide a long-term Ground Lease of the Premises which secures the delivery of public benefits, while providing a road map for FA to achieve the certainty of tenure required for its development of the Project.

However, because letters of intent are non-legally binding, FA represented to City staff that it has experienced challenges in fundraising as prospective equity partners and donors had indicated to FA their desire to see a legally-binding agreement from the City which would commit the City to grant the Ground Lease to FA upon satisfaction of all Ground Lease Pre-Conditions (without the need for further Council approvals). This would remove any perceived uncertainty regarding Council’s intentions to grant a long-term lease tenure to FA upon satisfying all Ground Lease Pre-Conditions, and allow FA to advance their fundraising campaign more aggressively (confirmation of equity and debt commitments to the City’s satisfaction being one of the Ground Lease Pre-Conditions, and a critical requirement for FA to plan for the Project).

To reaffirm Council’s support and remove these perceived fundraising hurdles, City staff are recommending a Development Agreement as the appropriate tool to provide a legally binding commitment from the City prior to entering into the Ground Lease, which requires that the City’s Ground Lease Pre-Conditions for adequate delivery of public benefits in the Project are satisfied, and thereby minimizing risk to both FA and the City.

The Development Agreement

Should Council approve the Recommendation A of this report, Staff would be authorized to negotiate and execute the Development Agreement to the satisfaction of the General Manager of REFM, General Manager of ACCS and Director of Legal Services.

Staff are recommending that the DA incorporate the terms and conditions of the LOI, previously approved by Council on July 6, 2021. The Ground Lease Pre-Conditions (see Appendix B) to be included in the DA would be materially unchanged from the conditions of the LOI, excepting the condition to seek Council’s subsequent approval of the Ground Lease. For clarity, should Council approve Recommendations A and B of this report, then upon satisfaction of the Ground Lease Pre-Conditions there would be no further approvals required of Council to enter into the nominal Ground Lease.

The Ground Lease

Should Council approve Recommendation B of this report, Staff would be authorized to negotiate and, subject to satisfaction of the Ground Lease Pre-Conditions contained in the DA, execute the Ground Lease on terms generally consistent with those included in the LOI, previously approved by Council July 6, 2021, with the key terms as follows:

- **Permitted Use:** institutional project including both a day school program and childcare functions for long-term use as an educational centre for dyslexia and community literacy;
- **Nominal Gross Rent:** \$100 for the Initial Term and any Renewal Options, inclusive of rent in lieu of property taxes, so long as the Premises continue to be used for the permitted use only;
- **Initial Term:** 60 years;
- **Renewal Options:** two conditional options to renew of 20 years and 19 years, respectively, which would not require a further Council approval;

The Ground Lease would be drawn on the City's standard form of long-term ground leases with non-profits, all to the satisfaction of the General Manager of REFM, General Manager of ACCS and Director of Legal Services.

Financial Implications

The Director of Real Estate Services has estimated the market value of the Ground Lease at \$27.5 million, inclusive of the Initial Term and all Renewal Options (representing 95% of Fee Simple land value for a 99-year land lease). This estimate reflects the Premises' land use being restricted to institutional and includes the value of rent-in-lieu of property taxes, forecast to be \$122,000 per annum commencing 2030 plus annual inflation.

As the proposed Nominal Gross Rent for the Ground Lease is below the applicable market rate, Recommendation B constitutes a grant and requires a 2/3 affirmative vote of all Council members, pursuant to Section 206(1) of the Vancouver Charter.

FA is responsible for the design, construction, financing, operation and maintenance of the redevelopment of the site. The project is expected to be self-sustaining over the long-term and do not require further financial contributions and/or guarantees from the City.

Legal Implications

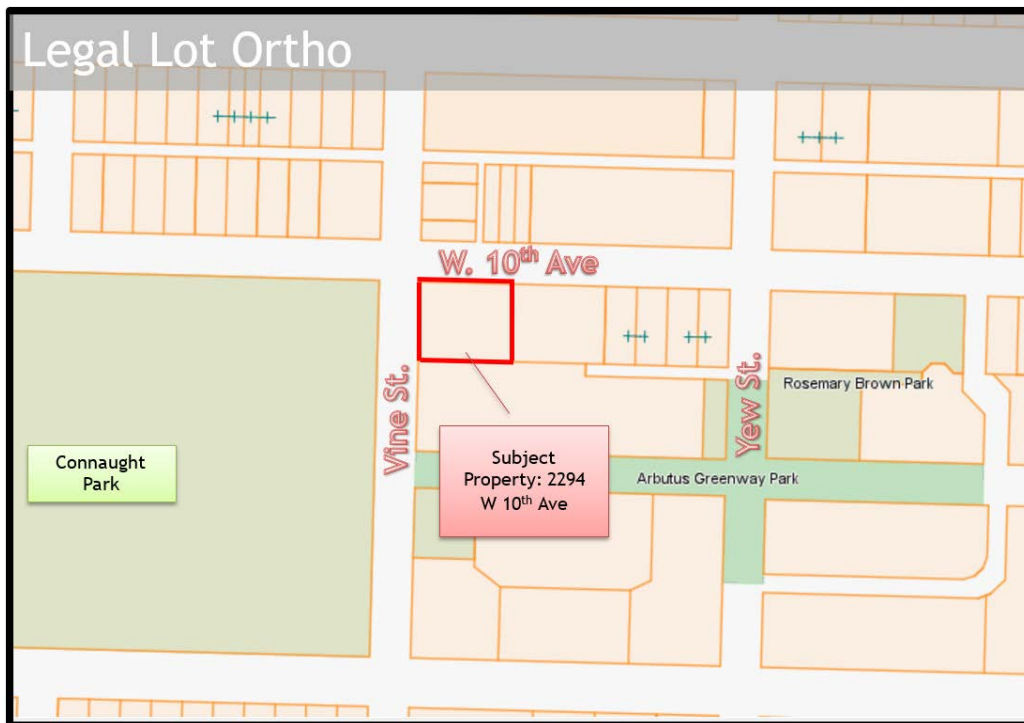
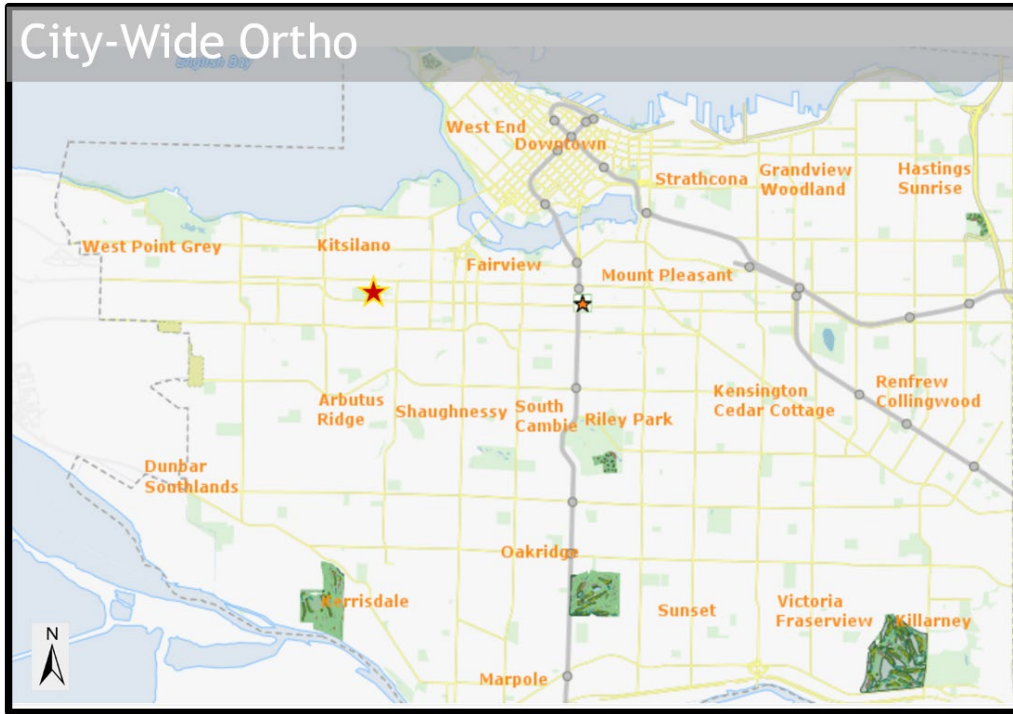
The Development Agreement would be in accordance with the City's standard form of development agreements used for similar projects, and the terms and provisions will generally be aligned with the signed LOI previously approved by Council on July 6, 2021 (see Appendix C). The Development Agreement will require FA to satisfy all of the Ground Lease Pre-Conditions (see Appendix B) prior to the City being legally obligated to grant FA a long-term Ground Lease of the Premises. Accordingly, the negotiation, execution and delivery of the Development Agreement will precede the execution and delivery of the Ground Lease.

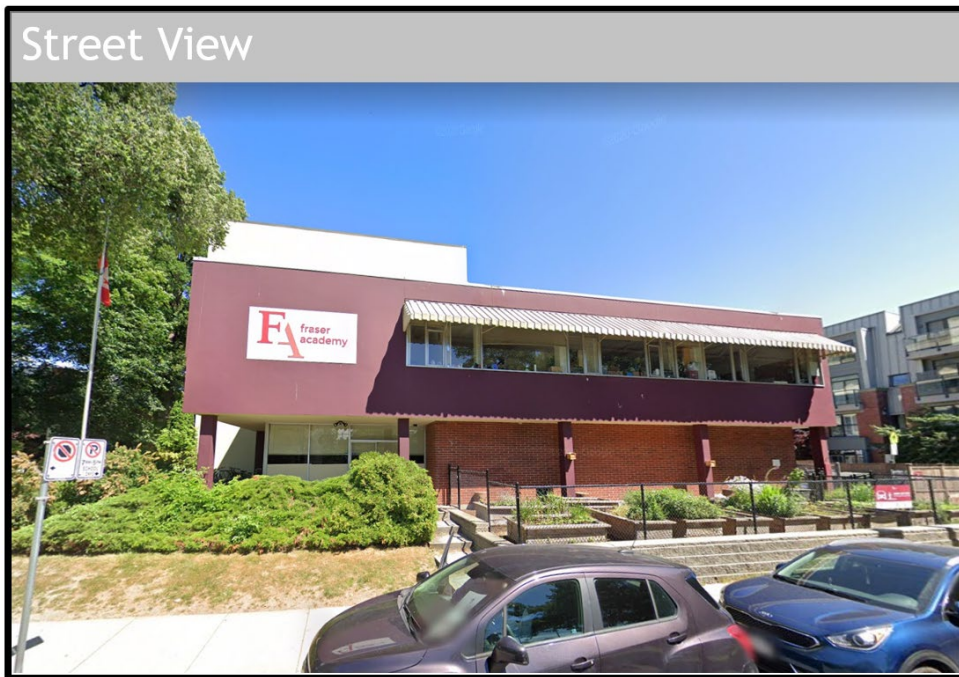
The Ground Lease would be drawn on the City's standard form of long-term ground leases with non-profit organizations. The below market Ground Lease to FA constitutes a grant requiring a 2/3 affirmative vote of all Council members, pursuant to Section 206(1) of the Vancouver Charter. Further and pursuant to Section 206(1)(j) of the Vancouver Charter, City Council deems Fraser Academy to be an organization that is contributing to the culture, beautification, health or welfare of the city. As stated above, and for certainty, staff are seeking authority to legally obligate the City, by way of the Development Agreement, to enter into the Ground Lease upon FA's satisfaction of the Ground Lease Pre-Conditions without having to return to Council for any further approvals.

Both the Development Agreement and the Ground Lease will be prepared to satisfaction of the General Manager of REFM, General Manager of ACCS and Director of Legal Services.

* * * * *

APPENDIX A THE PREMISES





APPENDIX B GROUND LEASE PRE-CONDITIONS

PRE-CONDITIONS FOR ENTERING INTO A GROUND LEASE

The following conditions (the “**Ground Lease Pre-Conditions**”), must be satisfied prior to the City granting a Ground Lease to FA:

(1) FA has provided to the City a business plan for the Project which will include an expanded day-school program and childcare facility (that meets the intent of the Childcare Design Guidelines) on the Premises, to the satisfaction of the General Manager of Real Estate & Facilities Management and the General Manager of Arts, Culture & Community Services, acting reasonably (including without unreasonable delay in confirming satisfaction of such plan), prior to any application for redevelopment, including, without limitation:

- (a) a Programming Plan that supports its vision for the Project as a Centre for Dyslexia & Community Literacy (by way of example, day-school program, outreach services, training centre, childcare onsite with early literacy screening capacity, bursary funding (within FA’s financial capacity and resources) and education agreements);
- (b) a Public Benefit Plan that outlines:
 - (i) how the Project supports public access to programs and community benefits for all children with specific language-based learning disabilities, again, acknowledging FA’s particular focus is dyslexia, including equity seeking groups (by way of example, low income, Indigenous and racialized communities); and
 - (ii) how the Project could support access for an increased percentage of the student body from families for who can’t afford the tuition, and/or a combination of an increased total number of students on reduced tuition and a deeper reduction in tuition for those families experiencing the largest financial barriers, in recognition of the significant public subsidy that a nominal long-term Ground Lease represents; and
- (c) a Capital and Operating Funding Strategy (“**COFS**”) for: i) construction; and ii) ongoing programming and facility costs, including fundraising and support from other levels of government, tuition fees and other funding sources, which demonstrates the financial viability of the FA’s expanded vision. For the avoidance of any doubt the COFS and in particular, but without limitation, reference to fundraising and support from government is not intended by the City to hold FA to any level of success in terms of the amount of funding secured or guarantee of government support, rather it must simply lay out reasonable strategies to seek support to enable a viable financial model.

(2) The City has approved a Project Pro Forma submitted by FA incorporating current financial information based upon the then-current design for the Project, including all sources of required debt and equity financing and Class C Construction Cost Estimates for redevelopment of the Premises, which sets out cash flows for the Project in the most accurate way feasible at such point in time.

(3) FA has obtained commitment letters, letters of intent, memoranda of understanding, donation/pledge agreement/commitments and/or other similar financial (including in-kind as may be applicable) commitments in respect of Project equity and debt financing on reasonable terms and conditions to the City's satisfaction which demonstrate that:

- (a) the debt will be paid down without risk to FA's long-term obligations to operate and maintain the Project in accordance with the Ground Lease;
- (b) the Project equity and debt financing terms are without risk to the City's rights to the Lands and interests under the Ground Lease, including reputational (with the City acting reasonably in all respects in this section, and as regards reputational risk, acknowledging FA, given the nature of its mission and charitable status has its own standards and protections in place); and
- (c) the debt is for capital costs only and is not being incurred to finance operating costs. Regarding FA's Project equity through fundraising and any other sources, the City acknowledges funding commitments can be personal and/or confidential in nature so FA may provide confirmations needed in an agreed format statutory declaration(s) (again, acting reasonable and noting the City's stance on points (a) to (c) above)).

(4) The Development Permit prior-to letter for the Project has been obtained or is issuable.

(5) The City and FA have prepared an execution version of the Ground Lease and confirmed to each other that it is in a form acceptable for execution by them upon satisfaction of all other Ground Lease Pre-Conditions, and such Ground Lease will be generally in the City's standard form of ground lease and will include, *inter alia*, terms to the effect that:

- (a) The initial term shall be sixty (60) years (the "Initial Term");
- (b) The Ground Lease shall contain two (2) renewal options, of twenty (20) and nineteen (19) years respectively (the "Renewal Options"), such that the Ground Lease may conditionally be extended such that the Initial Term and all Renewal Options provide for a maximum tenure of ninety-nine (99) years. The Renewal Options will be conditional on the City's satisfaction, in its sole discretion, acting reasonably, with FA's financial and organizational capacity to operate, maintain and program the Premises in accordance with the terms and requirements of the Ground Lease, based on information to be provided by FA, at the City's request, acting reasonably, including:
 - i. a Programming Plan and Public Benefit Plan (as noted in the Ground Lease Pre-Conditions);
 - ii. a Building Condition Report, prepared by an independent third-party;
 - iii. a Capital Asset Plan that sets out the reasonable maintenance, repair and replacement standards/practices required to preserve the capital components of the Premises over the term;
 - iv. a Replacement Reserve for capital replacements as set out in the Capital Asset Plan;

- (c) nominal gross rent shall be \$100 inclusive of rent in lieu of property taxes, prepaid for the Initial Term and any Renewal Options exercised by FA and approved by the City (the “Rent”), so long as the Premises continues to be used for their intended purpose, and further noting that should incorporated institutions of learning cease to be provided property tax exemptions, per Section 396(1)(c)(ii) of the Vancouver Charter, the rent in lieu of property tax component would become due annually;
- (d) the Ground Lease will terminate and the Premises will be surrendered to the City if they cease to at any time be used for their intended purpose, subject to any curative rights set forth in further detail in the Ground Lease, without compensation to FA;
- (e) FA will carry out and complete the Project by a mutually acceptable date, at its sole cost and expense.

(6) Such other conditions as may be reasonably required by the General Manager of Real Estate & Facilities Management, the General Manager of Arts, Culture & Community Services and the Director of Legal Services, to give effect to Council’s intent for the use of the Premises.

FA acknowledges that the Ground Lease Pre-Conditions should be met sequentially, such that (for example) FA’s applications for rezoning and development permits are not submitted until staff have confirmed that Ground Lease Pre-Conditions (1)-(3) have been satisfied, unless otherwise mutually agreed by the parties (acting reasonably). Notwithstanding the foregoing, the City acknowledges and agrees that it is only reasonable for FA to discuss, consult and engage with the City’s planning department as soon as possible and throughout the process of satisfying all of the Ground Lease Pre-Conditions as the business plan, and other plans referenced in this section can only be developed with the City’s guidance on the potential capacity of the Premises. Further, the City acknowledges and agrees that FA’s work to satisfy the Ground Lease Pre-Conditions in this section can proceed simultaneously (for example, FA may commence its fundraising to satisfy Condition (3) while working to satisfy Ground Lease Pre-Conditions (1) and (2)). FA further acknowledges that it will be solely responsible for all costs and expenses incurred in satisfying the Ground Lease Pre-Conditions and in prosecuting the Ground Lease and the Project, regardless of the final outcome, which, it is acknowledged, these terms do not guarantee.

If FA meets all the Ground Lease Pre-Conditions before the Termination Date and notifies the City in writing, then the City will within 10 Business Days of confirming satisfaction of all Ground Lease Pre-Conditions provide written notice to FA confirming its satisfaction of all conditions and the parties will proceed to the execution and delivery of the Ground Lease, which will be outlined in the Development Agreement.

If the Ground Lease Pre-Conditions have not been met by FA by the Termination Date, then the City may, at its option and sole discretion, offer FA a lease or sublease of a portion of the Premises within a City-project or at another City site, subject to Council approval.

**APPENDIX C
LETTER OF INTENT (APPROVED JULY 6, 2021)**

**FRASER ACADEMY - 2294 WEST 10TH AVENUE
LETTER OF INTENT**

(this “LOI”) is made and is effective as of July 13, 2021 (the “Effective Date”),

BETWEEN:

FRASER ACADEMY ASSOCIATION (Soc. No. S-0017755), a society with offices at 2294 West 10th Avenue, Vancouver, British Columbia, V6K 2H8 (the “FA”)

AND:

CITY OF VANCOUVER, a municipal corporation continued pursuant to the *Vancouver Charter*, and having its City Hall at 453 West 12th Avenue, Vancouver, British Columbia V5Y 1V4 (the “City”)

1.0 BACKGROUND:

(A) The City is the owner of all and singular those lands and premises situate in the City of Vancouver, in the Province of British Columbia, having a civic address of 2294 West 10th Avenue, and legally described as:

PID: 023-150-645 Lot 2 Block 363 District Lot 526 Group 1 New Westminster District Plan LMP24360 (the “Premises”);

(B) FA leases the Premises pursuant to a lease and subsequent modification and renewal dated July 17, 1995 and July 17, 2010 respectively, which lease expires on July 16, 2025 (the “Lease”);

(C) By resolution of the Vancouver City Council (“Council”) on July 6, 2021 (the “Council Resolution”), the Landlord has agreed to extend the term of the Lease by five (5) years, from July 17, 2025 until July 16, 2030 (the “Termination Date”), and thereafter, subject to certain conditions, to grant a minimum 60-year ground lease with two (2) conditional options to renew for twenty (20) and nineteen (19) years respectively (the “Ground Lease”) to FA for the Premises;

(D) The parties wish to set out their mutual understanding of the process and conditions which must be satisfied prior to the Termination Date in order for the City to grant a Ground Lease to FA.

2.0 PURPOSE AND NON-BINDING NATURE OF LOI:

The purpose of this LOI is to confirm the conditions and understanding upon which the parties will proceed with discussions and negotiations of the terms of a Ground Lease for the Premises. While the LOI does not create legally binding rights or obligations, the parties wish to confirm their mutual intention to work together in a cooperative and

collaborative manner to provide for FA's redevelopment of the Premises into an expanded institutional project including both a day school program and a childcare function (the "Project"), for long-term use as a world-class educational centre for dyslexia and community literacy.

The parties acknowledge that all obligations of the City will be subject to approvals by Council and without limiting the foregoing, nothing herein shall fetter the public process or the discretion of Council with respect to the exercise or performance of any of its regulatory powers or functions.

3.0 ACKNOWLEDGEMENT OF FA'S CONTRIBUTION

Pursuant to Section 206(1)(j) of the Vancouver Charter, Council has deemed that FA is a non-profit society and recognizes the unique benefit its programs provide for children with specific language-based learning disabilities (FA's particular focus being dyslexia, acknowledging that such children are represented as part of a marginalized group) including children that are represented in vulnerable, at-risk and equity seeking populations, and is "contributing to the culture, beautification, health or welfare of the city".

4.0 CONDITIONS FOR ENTERING INTO A GROUND LEASE

The following conditions (the "Conditions"), must be satisfied prior to the City granting a Ground Lease to FA:

(1) FA has provided to the City a business plan for the Project which will include an expanded day-school program and childcare facility (that meets the intent of the Childcare Design Guidelines) on the Premises, to the satisfaction of the General Manager of Real Estate & Facilities Management and the General Manager of Arts, Culture & Community Services, acting reasonably (including without unreasonable delay in confirming satisfaction of such plan), prior to any application for redevelopment, including, without limitation:

- (a) a Programming Plan that supports its vision for the Project as a Centre for Dyslexia & Community Literacy (by way of example, day-school program, outreach services, training centre, childcare onsite with early literacy screening capacity, bursary funding (within FA's financial capacity and resources) and education agreements).
- (b) a Public Benefit Plan that outlines how the Project supports public access to programs and community benefits for all children with specific language-based learning disabilities, again, acknowledging FA's particular focus is dyslexia, including equity seeking groups (by way of example, low income, Indigenous and racialized communities); and
- (c) a Capital and Operating Funding Strategy ("COFS") for: i) construction; and ii) ongoing programming and facility costs, including fundraising and support from other levels of government, tuition fees and other funding sources, which demonstrates the financial viability of the FA's expanded vision. For the avoidance of any doubt the COFS and in particular, but

without limitation, reference to fundraising and support from government is not intended by the City to hold FA to any level of success in terms of the amount of funding secured or guarantee of government support, rather it must simply lay out reasonable strategies to seek support to enable a viable financial model.

(2) The City has approved a Project Pro Forma submitted by FA incorporating current financial information based upon the then-current design for the Project, including all sources of required debt and equity financing and Class C Construction Cost Estimates for redevelopment of the Premises, which sets out cash flows for the Project in the most accurate way feasible at such point in time.

(3) FA has obtained commitment letters, letters of intent, memoranda of understanding, donation/pledge agreement/commitments and/or other similar financial (including in-kind as may be applicable) commitments in respect of Project equity and debt financing on reasonable terms and conditions to the City's satisfaction which demonstrate that:

- (a) the debt will be paid down without risk to FA's long-term obligations to operate and maintain the Project in accordance with the Ground Lease;
- (b) the Project equity and debt financing terms are without risk to the City's rights to the Lands and interests under the Ground Lease, including reputational (with the City acting reasonably in all respects in Section 4.0, and as regards reputational risk, acknowledging FA, given the nature of its mission and charitable status has its own standards and protections in place); and
- (c) the debt is for capital costs only and is not being incurred to finance operating costs. Regarding FA's Project equity through fundraising and any other sources, the City acknowledges funding commitments can be personal and/or confidential in nature so FA may provide confirmations needed in an agreed format statutory declaration(s) (again, acting reasonable and noting the City's stance on points (a) to (c) above)).

(4) The Development Permit prior-to letter for the Project has been obtained or is issuable.

(5) The City and FA have prepared an execution version of the Ground Lease and confirmed to each other that it is in a form acceptable for execution by them upon satisfaction of all other Conditions (and subject to Council approval), and such Ground Lease will be generally in the City's standard form of ground lease and will include, *inter alia*, terms to the effect that:

- (a) The initial term shall be sixty (60) years (the "Initial Term");
- (b) The Ground Lease shall contain two (2) renewal options, of twenty (20) and nineteen (19) years respectively (the "Renewal Options"), such that the Ground Lease may conditionally be extended such that the Initial Term and all Renewal Options provide for a maximum tenure of ninety-nine (99) years. The Renewal Options will be conditional on the City's satisfaction, in its sole discretion, acting reasonably, with FA's financial and organizational capacity to operate, maintain and program the

Premises in accordance with the terms and requirements of the Ground Lease, based on information to be provided by FA, at the City's request, acting reasonably, including:

- i. a Programming Plan and Public Benefit Plan (as noted in the Conditions);
 - ii. a Building Condition Report, prepared by an independent third-party;
 - iii. a Capital Asset Plan that sets out the reasonable maintenance, repair and replacement standards/practices required to preserve the capital components of the Premises over the term;
 - iv. a Replacement Reserve for capital replacements as set out in the Capital Asset Plan;
- (c) nominal gross rent shall be \$100 inclusive of rent in lieu of property taxes, prepaid for the Initial Term and any Renewal Options exercised by FA and approved by the City (the "Rent"), so long as the Premises continues to be used for their intended purpose, and further noting that should incorporated institutions of learning cease to be provided property tax exemptions, per Section 396(1)(c)(ii) of the Vancouver Charter, the rent in lieu of property tax component would become due annually;
- (d) the Ground Lease will terminate and the Premises will be surrendered to the City if they cease to at any time be used for their intended purpose, subject to any curative rights set forth in further detail in the Ground Lease, without compensation to FA;
- (e) FA will carry out and complete the Project by a mutually acceptable date, at its sole cost and expense.

(6) Such other conditions as may be reasonably required by the General Manager of Real Estate & Facilities Management, the General Manager of Arts, Culture & Community Services and the Director of Legal Services, to give effect to Council's intent for the use of the Premises.

(7) Council approval of the form of Ground Lease.

FA acknowledges that the Conditions should be met sequentially, such that (for example) FA's applications for rezoning and development permits are not submitted until staff have confirmed that Conditions (1)-(3) have been satisfied, unless otherwise mutually agreed by the parties (acting reasonably). Notwithstanding the foregoing, the City acknowledges and agrees that it is only reasonable for FA to discuss, consult and engage with the City's planning department as soon as possible and throughout the process of satisfying all of the Conditions as the business plan, and other plans referenced in this Section 4 can only be developed with the City's guidance on the potential capacity of the Premises. Further, the City acknowledges and agrees that FA's work to satisfy the Conditions in Section 4 can proceed simultaneously (for example, FA

may commence its fundraising to satisfy Condition (3) while working to satisfy Conditions (1) and (2)). FA further acknowledges that it will be solely responsible for all costs and expenses incurred in satisfying the Conditions and in prosecuting the Ground Lease and the Project, regardless of the final outcome, which, it is acknowledged, this LOI does not guarantee.

If FA meets all the Conditions except for Condition (7) before the Termination Date, staff will bring forward the Ground Lease for Council approval at that time.

If the Conditions have not been met by FA by the Termination Date, then the City may, at its option and sole discretion, offer FA a lease or sublease of a portion of the Premises within a City-project or at another City site, subject to Council approval.

5.0 AMENDMENTS AND DURATION OF THE LOI

This LOI is effective from the Effective Date until the Termination Date. This LOI may be amended with the mutual written agreement of the parties, subject to Council approval.

6.0 MISCELLANEOUS

6.1 Communication

No party will speak on behalf of the other party without that party's prior express written permission.

6.2 Counterparts

This LOI and any document collateral hereto may be executed and transmitted by facsimile, scan or email transmission and in any number of counterparts, and such counterparts taken together shall be deemed to constitute one and the same document.

TO CONFIRM THEIR INTENTION TO IMPLEMENT THIS LOI, the parties have executed this document in the spaces provided below to be effective as of the Effective Date.

FRASER ACADEMY ASSOCIATION by
its authorized signatory(ies):



Name: MAUREEN STELTMAN
Position: HEAD OF SCHOOL

CITY OF VANCOUVER by its
authorized signatory:



Name: Andrew Newman
Position: Associate Director RES



Name: DAVID SACKS
Position: SECRETARY & TREASURER

Approved by Council on July 6, 2021