



CITY OF KINGSTON
REPORT TO COUNCIL

Report No.: 12-228

TO: Mayor and Members of Council
FROM: Cynthia Beach, Commissioner, Sustainability & Growth
RESOURCE STAFF: Brian McCurdy, Director, Cultural Services
DATE OF MEETING: July 17, 2012
SUBJECT: The Tett Centre for Creativity and Learning – Approval of a Master Lease & Municipal Capital Facility Agreement

EXECUTIVE SUMMARY:

The purpose of this report is to provide Council with an update on the redevelopment of the J.K. Tett Centre to be opened in December 2013 as the Tett Centre for Creativity and Learning.

In accordance with the business plan approved on March 23, 2010, this report seeks final Council approval and authorization for the Mayor and Clerk to sign a master lease agreement with the not-for-profit organization, The Tett Centre for Creativity and Learning (TCCL) as the master lease holder and facility operator. This report also seeks approval to declare the Tett Centre for Creativity and Learning as a municipal capital facility in support of the business plan which approves the waiver of property taxes for the property.

In order to proceed with the redevelopment of the Centre, approval for these agreements is required from Council. Combined with the award of a favourable construction contract in late summer, these final agreements will establish the Tett Centre for Creativity and Learning.

RECOMMENDATION:

THAT the Mayor and Clerk be authorized to execute a master lease agreement and any other agreements as may be deemed necessary, in accordance with the business plan approved by Council on March 23, 2010, with the not-for-profit organization, the Tett Centre for Creativity and Learning, as the master lease holder and facility operator of the Tett Center for Creativity and Learning located at 370 King Street West for \$1 per year plus operating expenses for a term of 10 years with an option to renew for a second ten years on terms and conditions satisfactory to the Commissioner of Sustainability and Growth and the Director of Legal Services; and

July 17, 2012

- Page 2 -

THAT the Director of Culture be authorized to approve subtenant lease agreements and any other agreements as may be required on a net-lease basis to support the business plan as presented by the Tett Centre for Creativity and Learning as the master lease holder, on terms and conditions satisfactory to the Director of Legal Services and the Director of Real Estate and Construction; and

THAT the master lease to be executed between the City and the Tett Centre for Creativity and Learning, include necessary language confirming that the municipally owned property will be entirely operated as a municipal facility for cultural, recreational and tourist purposes in accordance with the requirements of the Municipal Act, 2001 section 110 and Ontario Regulation 603/06; and

THAT Council pass this resolution required by clause 6(1)(b) of Ontario Regulation 603/06 confirming that the Tett Centre for Creativity and Learning is a municipal capital facility to be entirely occupied for cultural, recreational or tourist purposes of the municipality and that it is operated for public use; and

THAT in accordance with Section 110 (6) of the Municipal Act, 2001, a by-law be presented and given all three readings, to provide an exemption to the property to which the municipal capital facility agreement applies, from taxation for municipal and school purposes; and

THAT the Clerk be directed to give written notice of the by-law to the local school boards having jurisdiction in the area in which the property is located and the Municipal Property Assessment Corporation (MPAC) as required by section 110(8).

July 17, 2012

- Page 3 -

AUTHORIZING SIGNATURES:

ORIGINAL SIGNED BY COMMISSIONER Cynthia Beach, Commissioner, Sustainability & Growth
ORIGINAL SIGNED BY CHIEF ADMINISTRATIVE OFFICER Gerard Hunt, Chief Administrative Officer

CONSULTATION WITH THE FOLLOWING COMMISSIONERS:

Lanie Hurdle, <i>Community Services</i>	N/A
Denis Leger, <i>Transportation, Properties & Emergency Services</i>	√
Jim Keech, <i>President and CEO, Utilities Kingston</i>	N/A

(N/R indicates consultation not required)

July 17, 2012

- Page 4 -

OPTIONS/DISCUSSION:**The Tett Centre for Creativity and Learning**

The J.K. Tett Centre is a 31,195 square foot building owned by the City of Kingston located at 370 King Street West, adjacent to Corrections Canada Lands, Queen's University, a residential area and the Lake Ontario Waterfront. Queen's University purchased a portion of the former J.K. Tett Centre complex from the City of Kingston and is working to design and construct a world class performing arts facility, now referred to as the Isabel Bader Centre for the Performing Arts.

Redevelopment of the remainder of the site into the Tett Centre for Creativity and Learning (The Tett Centre) will provide a venue that will contribute to a vibrant arts community in Kingston, foster synergy among the tenant groups, engage and support new artists, and enhance the City's relationship with Queen's University. Programming in the building will be focused on community and campus interaction to help the public, students and faculty interact with community arts groups.

Since the approval of the project in principle by Council in 2008, a variety of activities have been undertaken to advance the future of the Tett Centre in a way that provides clarity of the public benefits for this project.

There are three main public policy objectives being achieved with the provision of affordable accommodations for creative groups at the Tett Centre. The first is promoting the cross-development of community and academic resources in a hub that integrates arts, culture and heritage in an incubation setting that promotes knowledge transfer between post-secondary institutions and local enterprises. Second, the creation of an art hub also meets the objective of bringing a redundant heritage building back into use. Third, the provision of meeting space, gallery space and affordable program space also achieves a level of support to the arts community in Kingston.

The property's heritage significance, outstanding lakeside location and co-location with the Isabelle Bader Centre for the Performing Arts combined, create a unique opportunity for strategic investment in both the fabric of the building and in the arts and cultural sector.

Once completed, the Tett Centre for Creativity and Learning will join the ranks of some of the most uniquely designed art hubs in Ontario that have also been developed within historically significant restoration sites such as the Wychwood Barns art hub and the 401 Richmond art hub located in former industrial warehouses in Toronto.

In June 2012, a final cost estimate (based on a full description of preferred options, 100% complete construction/design documents, and market conditions) by Hanscomb Ltd. provided the City with an estimated cost of construction. Including design contingencies, inflation and other additional project ancillary costs such as professional fees, project management, development charges and other costs not directly associated with the building construction contract, the current anticipated total project cost remains at \$11,500,000.

July 17, 2012

- Page 5 -

Final submissions based on a two stage RFP process were received on July 4. Pending an approval by Council of the agreements discussed in this report, it is anticipated that a favourable construction contract will be awarded in August with construction commencing in late summer.

Master Lease and Facility Operator

Property ownership of the Tett Centre will be retained by the City and the property will be leased to a single master leaseholder, to be known as the Facility Operator. The not-for-profit organization, the Tett Centre for Creativity and Learning (TCCL) will be the master lease holder and facility operator of the Tett Centre as a community centre to be used for workshops, programs, athletics, drama, art, music, handicrafts, hobbies and recreation for the benefit of the general public.

In accordance with the March 2010 final business plan approved by Council, the final master lease sets out in detail the fiscal, legal and other responsibilities of the Landlord (the City of Kingston) and the Facility Operator (the TCCL). Based on the approved framework of the business plan, the master lease recognizes foremost, the development of an affordable, sustainable and stable business model for the Tett Centre based on a range of operating assumptions. To capture these assumptions in the master lease, standard covenants have been included along with a series of schedules that will govern the working relationship between the City and the TCCL as follows:

1. A ten year master lease at a cost of \$1 per year plus operating expenses with the option to renew for an additional 10 years will provide greater flexibility in applying for future capital grants and provide long term stability to support program and audience development. Operating expenses include items such as insurance, capital, facility maintenance, common area maintenance, utilities, management staff and administration.
2. The TCCL, as the master lease holder and facility operator would be authorized to enter into sublease agreements with not-for-profit arts and cultural organizations on a net-lease agreement basis at affordable rates (indexed to inflation) of \$6.75 per square foot in year one (base rent plus operating expenses). The master lease holder will also rent studio spaces to individual artists at market rates ranging from \$20-\$25 per square foot. The master lease between the TCCL and the City would be required to be attached to all subleases and the City must approve all subleases. Minimum terms and conditions will be specified to allow the TCCL to customize their form of lease where necessary. Each of the sublease agreements contain a scope of Landlord's work specific to the individual space and terms for payment to the City for the capital work to be completed on their behalf. The updated and final list of subtenants includes:
 1. Kingston School of Dance
 2. Kingston Potters' Guild
 3. Theatre Kingston

July 17, 2012

- Page 6 -

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4. Modern Fuel Artist Run Gallery
 5. Kingston Handloom Weavers and Spinners
 6. Kingston Lapidary and Mineral Club
 7. Joe's MILL Musical Instrument Lending Library
 8. Salon Productions - The Macdonald Festival
3. The master leaseholder and facility operator will retain control over the malting tower, community exhibition space and studios and manage them as rental spaces to provide an income stream. Minimum requirements expected by the City in the operation of the rental facilities based largely on the same format used by the City for its facilities.
 4. The facility operator will be responsible for animating the meeting space and gallery space to ensure the Tett Centre is used by a wide cross-section of community organizations. In the form of a service level agreement with Cultural Services, the master lease enshrines the artistic and public benefit objectives of the Tett Centre and set out an annual process to evaluate the Facility Operator and their compliance with these objectives.
 5. In the form of a facility maintenance service level agreement, the overall maintenance of the building envelope including the heritage structure, life safety, mechanical and electrical systems in the building will be maintained by the City at a projected cost of up to \$50,000. A projected annual capital replacement reserve of up to \$32,000 has also been built into the business plan.
 6. The facility operator will be responsible for maintaining the common spaces and individual tenant spaces in a clean, healthy and presentable manner and work cooperatively with tenants with regard to building and site operations, security, garbage & recycling, parking and maintenance issues. Individual tenants will be responsible to look after the interior cleaning and maintenance of their own spaces and to pay for utility costs in their own suites.
 7. The facility operator will be responsible for facility management and promoting the cross-development of community and academic resources in a hub that integrates arts, culture and heritage that promotes knowledge transfer between post-secondary institutions and local enterprises.
 8. The agreement with the facility operator will contain a provision to declare the Tett Centre for Creativity and Learning as a Municipal Capital Facility as per Section 110 of the Municipal Act to allow the City to provide assistance in the form of tax exemption and lease payments.

The master lease agreement and all schedules have been reviewed and agreed to in principle by the voting Directors (includes all tenants) of the TCCL board and their legal counsel. The

July 17, 2012

- Page 7 -

Board Chair has been directed by a unanimous vote to sign the master lease agreement with City upon approval by Council.

Business Plan

In accordance with the March 2010 approved business plan, City staff has worked with the TCCL Board as the proposed facility operator, to finalize an operational business plan. As determined by that planning process, each of the sub-tenants will pay the master lease holder, on a net-lease basis an annual total rent of \$6.75 per square foot with annual inflationary increases over the term of the sub-lease. This total rent is composed of two amounts; 1) a base rent of \$3.82 per square foot, and 2) under the terms of a net-lease, sub-tenants will pay an additional annual rate of \$2.93 per square foot to cover operating expenses. This net-lease rate will be evaluated on an annual basis to ensure operating expenses are covered. Sub-tenants will also pay specific utilities directly metered to their own rental spaces. The TCCL will also secure additional revenue streams through rental of the studios, rehearsal spaces, and the malting tower multipurpose room at market rates.

The TCCL will set annual budgets to recover operating expenses and adjust the additional annual rate as necessary. Operating expenses of the facility include a facility maintenance service level agreement with the City, insurance, utilities, management, overhead and an annual contribution to the capital reserve. Until the Centre is operating at its full potential, rental revenue income streams and utility costs can only be conservatively projected based on similar facility management experiences. To solidify the operating plan, Cultural Services will meet with the TCCL Board and management team on a quarterly basis to adjust the plan as actual costs develop. For the first four years of transition, the annual contribution to the capital reserve and the facility maintenance service level cost may be adjusted to ensure that the level of annual tax subsidy remains at a level as defined by the approved business plan. As outlined in the 2010 business plan, Cultural Services will provide ongoing City support starting at \$125,000 and decreasing to approximately \$111,000 over a 10 year time period.

Municipal Capital Facility Agreement

Properties owned and occupied by the City of Kingston are exempt from taxation as per Section 3 of the Assessment Act, however, when the City leases a property to a third party, the exemption under the Assessment Act does not apply. Accordingly, the property becomes taxable unless the municipality enters in a Municipal Capital Facility Agreement with the operator in accordance with Section 110 of the Municipal Act and for purposes as listed in Ontario Regulation 603/06. One of the permitted purposes is for municipal facilities used for cultural, recreation or tourist purposes.

The business plan for the Tett Centre was developed with the intention that the City would use its authority under the Municipal Act, 2001 Section 110 to exempt the property from the requirement to pay property taxes and to provide other forms of financial support by entering into a Municipal Capital Facility Agreement with the operator.

July 17, 2012

- Page 8 -

Council must approve a resolution confirming the use of the property as being used for cultural, recreational or tourist purposes and pass a by-law in the form and content attached as Exhibit "A". The lease agreement must subsequently contain language to confirm the use to be used for verification by MPAC. Notice must be given to MPAC as well as the Ministry of Education.

EXISTING POLICY/BY LAW:

The lease and the approval of a Municipal Capital Facility Agreement with the Tett Centre for Creativity and Learning meets the Revenue Leasing and Licensing Policy approved by Council in December 2012. Section 15.11 of the policy indicates that providing reductions of rent including base rent, operating and property taxes through the use of Municipal Capital Facility Agreements is appropriate for social, cultural or recreational activities that make a significant contribution to strategic initiative(s) endorsed by Council.

NOTICE PROVISIONS:

There are no notice provisions with this report

ACCESSIBILITY CONSIDERATIONS:

None

FINANCIAL CONSIDERATIONS:

In accordance with the approved business plan, an initial annual operating subsidy is anticipated in the range of \$125,000 once the facility is occupied, decreasing per annum to approximately \$111,000.

The current value assessment of the building is only \$720,000. MPAC would have to provide a post renovation assessment value of the building, however, based on an average rate of \$3.81 per square foot for leased commercial buildings in the City, it is estimated that the taxes for the property if not exempted would be approximately \$131,000 based on a rentable area of 34,415 square feet.

CONTACTS:

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Brian McCurdy, Director, Cultural Services	613-546-4291 ext. 1354
Daniel Shipp, Coordinator, Sustainability & Growth	613-546-4291 ext. 1263
Kathy Gray, Real Estate Specialist, Real Estate & Construction	613-546-4291 ext. 2429

July 17, 2012

- Page 9 -

OTHER CITY OF KINGSTON STAFF CONSULTED:

Rob Crothers, Project Manager, Real Estate & Construction
Peter Huigenbos, Acting Director, Real Estate & Construction
Denis Leger, Commissioner, Transportation, Properties & Emergency Services
Alan McLeod, Senior Legal Counsel, Legal Services

EXHIBITS ATTACHED:

Exhibit "A" – Municipal Capital Facility Draft By-law

Municipal Capital Facility By-law
City of Kingston
BY-LAW No. 2012-

To authorize an agreement for the provision of a municipal capital facility at 370 King Street West, Kingston, Ontario

WHEREAS Section 110(1) of the *Municipal Act, 2001* provides that the council of a municipality may enter into agreements for the provision of a municipal facility for cultural purposes to operate for public use by any person and may pass by-laws exempting from property taxation for municipal and school purposes land, or a portion of it, on which municipal capital facilities are located; and

WHEREAS paragraphs 1 and 2 of section 2 of Ontario Regulation 603/06 prescribe municipal facilities related to council and the general administration of the municipality as eligible municipal capital facilities; and

WHEREAS the Council has approved that the City of Kingston (the "City") enter into a lease (the "Lease") with the Tett Centre for Creativity and Learning (the "TCCL") for the use of the premises particularly described in Schedule "A" hereto (the "Premises") for the provision of a cultural municipal capital facility; and

WHEREAS Council is desirous of entering into an agreement with the TCCL for the provision of municipal facilities at the Premises;

The Council of the City of Kingston HEREBY ENACTS as follows:

1. The City of Kingston is authorized to enter into agreement under section 110 of the *Municipal Act, 2001* with the TCCL for the provision of a municipal facility used for cultural purposes to operate for public use at the Premises, in accordance with O.Reg. 603/06 (the "Agreement").
2. The Premises occupied by the TCCL are exempt from taxation for municipal and school purposes.
3. This by-law shall be deemed repealed:
 - (a) If the Owner ceases to own the Premises without having assigned the Agreement to the new owner of the Premises;
 - (b) If the TCCL or its successor in law ceases to use the Premises for cultural purposes;
 - (c) When the Lease, or any renewal or extension of the Lease, expires;
 - (d) If the Lease, or any renewal or extension of the Lease, is terminated, for any reason whatsoever; or
 - (e) If the Agreement is terminated for any reason whatsoever.
4. (1) Sections 1 and 4 of this by-law shall come into force on the day that the by-law is enacted.
5. (2) Section 2 and 3 of this by-law shall come into force on the day that is the latter of:
 - a. The day the Agreement is entered into by the City and the TCCL; and
 - b. The day the Lease is entered into by the City and the TCCL.

GIVEN FIRST AND SECOND READING this day of , 2012.

GIVEN THIRD READING this day of , 2012.