

Council Meeting Number 2020-10
Addendum
Tuesday, March 3, 2020

The consent of Council is requested for the **addition of Clause 3 of Report Number 27: Received from the Chief Administrative Officer (Recommend).**

3. Multi-Year Lease – Kingston Penitentiary

Firstly:

That Council reconsider the following recommendation, approved on September 3, 2019:

That the Mayor and Clerk be authorized to execute an agreement with Correctional Service Canada for the City of Kingston to have access to the Kingston Penitentiary property to provide public tours and year round filming access in a form satisfactory to the Director of Legal Services; and

That the Mayor and Clerk be authorized to execute an agreement with St. Lawrence Parks Commission for the delivery of public tours at the Kingston Penitentiary site in a form satisfactory to the Director of Legal Services; and

That the Mayor and Clerk be authorized to execute any required agreement with Tourism Kingston for year round filming on the Kingston Penitentiary property.

Secondly:

That the Mayor and Clerk be authorized to execute an agreement with Correctional Service Canada for the City of Kingston to have access to the Kingston Penitentiary property to provide public tours and year round filming access in a form satisfactory to the Director of Legal Services; and

That the Mayor and Clerk be authorized to execute an agreement with St. Lawrence Parks Commission for the delivery of public tours at the Kingston Penitentiary site in a form satisfactory to the Director of Legal Services; and

That the Mayor and Clerk be authorized to execute any required agreement with Tourism Kingston for year round filming on the Kingston Penitentiary property.

Thirdly:

That the Mayor and Clerk be authorized to execute a three (3) year lease with five (5) optional one (1) year extensions with Public Safety and Emergency Preparedness to allow year-round access to Kingston Penitentiary based on the following elements and in a form satisfactory to the Director of Legal Services:

- a) Delivery of public tours, other various activities, and for profit generating activities;
 - b) \$100,000 in annual lease payment, subject to a 2% annual increase;
 - c) Payment In Lieu of Taxes on the property of \$474,000 per year no longer received;
 - d) Payment of utilities and maintenance costs up to a maximum of \$550,000 per year;
- and

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e) A maximum of 110 days of for-profit generating activities per year.

That the Mayor and Clerk be authorized to execute any required agreements with St. Lawrence Parks Commission and Tourism Kingston for the delivery of public tours, various activities, filming and for-profit generating activities at the Kingston Penitentiary site in a form satisfactory to the Director of Legal Services; and

That Council direct staff to work with the Development Fund Committee members to ensure that any deficit from the operations of the Kingston Penitentiary will be covered by the annual revenues being redirected to the Development Fund from the Municipal Accommodation Tax to ensure that property tax payers are not funding any shortfall as an operational cost.

(The Report of the Chief Administrative Officer (20-089) is attached to the addendum as schedule pages 1-8)



**City of Kingston
Report to Council
Report Number 20-089**

To: Mayor and Members of Council
From: Lanie Hurdle, Chief Administrative Officer
Resource Staff: Peter Huigenbos, Commissioner, Business, Environment & Projects
Date of Meeting: March 3, 2020
Subject: Multi-Year Lease – Kingston Penitentiary

Executive Summary:

The City of Kingston has been partnering with Correctional Service Canada (CSC) and St. Lawrence Parks Commission (SLPC) to enable the provision of public tours at the Kingston Penitentiary (KP) since 2016. In the past years, the partnership was structured in such a way that the City had a license agreement with CSC to access the property for \$1 per year and in turn the City retained SLPC to operate public tours on the property. The net profits were then redistributed 50/50 between United Way KFL&A and destination marketing (SLPC and Tourism Kingston). In 2019, filming was added to the permitted uses on the property. Based on discussions with CSC during the summer of 2019, it was anticipated that the partnership in 2020 would follow the same structure as previous years and therefore City staff brought a recommendation report to Council on September 3, 2019 ([Report Number 19-234](#)) to obtain approval to enter into agreements to continue the partnership and delivery of public tours and filming at KP. This report also mentioned that staff had been working with CSC to try to establish a multi-year agreement for the access and use of KP.

In the late fall of 2019, City staff were informed that based on federal procedures and policies, the multi-year lease agreement would have to be based on fair market value. Typically, previous one (1) year license agreements were signed in the fall prior to the tour season. Staff raised concerns with the time frame related to the change in process and the potential impacts on the 2020 access and tour season. City staff worked closely with CSC to identify a path forward recognizing that other federal departments were involved in this process and that a multi-year lease agreement would be established through Public Safety and Emergency Preparedness (PSEP). This process took quite some time and City Council recently passed a motion urging the federal government to accelerate the process to establish an agreement in time to enable public tours for the 2020 season. Public tours have typically run from May to October.

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Following this Council motion, the process accelerated and City staff received a draft multi-year lease agreement for consideration on February 27. City staff had a chance to discuss and negotiate the major elements of the multi-year lease agreement and are satisfied that minor details can be finalized over the next couple of weeks. Major points of the multi-year lease are detailed in the Options/Discussion section of this report.

This report is coming to Council as a late addition to the agenda because staff did not have sufficient information to provide Council until February 27. This report is also time sensitive in order to finalize an agreement and get the process started as soon as possible to implement 2020 public tours, including marketing, hiring of students, etc. This recommendation also requires a Council reconsideration as Council provided staff with a direction for a one year license agreement for \$1 as per [Report Number 19-234](#).

Recommendation:**Firstly:**

That Council reconsider the following recommendation, approved on September 3, 2019:

That the Mayor and Clerk be authorized to execute an agreement with Correctional Service Canada for the City of Kingston to have access to the Kingston Penitentiary property to provide public tours and year round filming access in a form satisfactory to the Director of Legal Services; and

That the Mayor and Clerk be authorized to execute an agreement with St. Lawrence Parks Commission for the delivery of public tours at the Kingston Penitentiary site in a form satisfactory to the Director of Legal Services; and

That the Mayor and Clerk be authorized to execute any required agreement with Tourism Kingston for year round filming on the Kingston Penitentiary property.

Secondly:

That the Mayor and Clerk be authorized to execute an agreement with Correctional Service Canada for the City of Kingston to have access to the Kingston Penitentiary property to provide public tours and year round filming access in a form satisfactory to the Director of Legal Services; and

That the Mayor and Clerk be authorized to execute an agreement with St. Lawrence Parks Commission for the delivery of public tours at the Kingston Penitentiary site in a form satisfactory to the Director of Legal Services; and

That the Mayor and Clerk be authorized to execute any required agreement with Tourism Kingston for year round filming on the Kingston Penitentiary property.

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Thirdly:

That the Mayor and Clerk be authorized to execute a three (3) year lease with five (5) optional one (1) year extensions with Public Safety and Emergency Preparedness to allow year-round access to Kingston Penitentiary based on the following elements and in a form satisfactory to the Director of Legal Services:

- a) Delivery of public tours, other various activities, and for profit generating activities;
- b) \$100,000 in annual lease payment, subject to a 2% annual increase;
- c) Payment In Lieu of Taxes on the property of \$474,000 per year no longer received;
- d) Payment of utilities and maintenance costs up to a maximum of \$550,000 per year;
- e) A maximum of 110 days of for-profit generating activities per year.

That the Mayor and Clerk be authorized to execute any required agreements with St. Lawrence Parks Commission and Tourism Kingston for the delivery of public tours, various activities, filming and for-profit generating activities at the Kingston Penitentiary site in a form satisfactory to the Director of Legal Services; and

That Council direct staff to work with the Development Fund Committee members to ensure that any deficit from the operations of the Kingston Penitentiary will be covered by the annual revenues being redirected to the Development Fund from the Municipal Accommodation Tax to ensure that property tax payers are not funding any shortfall as an operational cost.

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Authorizing Signatures:

ORIGINAL SIGNED BY CHIEF
ADMINISTRATIVE OFFICER

**Lanie Hurdle, Chief
Administrative Officer**

Consultation with the following Members of the Corporate Management Team:

Paige Agnew, Commissioner, Community Services

Peter Huigenbos, Commissioner, Business, Environment & Projects

Brad Joyce, Acting Commissioner, Corporate Services

Jim Keech, President & CEO, Utilities Kingston Not required

Desirée Kennedy, Chief Financial Officer & City Treasurer

Sheila Kidd, Commissioner, Transportation & Public Works Not required

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Options/Discussion:**Background****2016 Kingston Penitentiary Public Tours**

In May 2016, Council approved partnerships with Correctional Service Canada (CSC) and the St. Lawrence Parks Commission (SLPC) to operate public tours at the Kingston Penitentiary property. The SLPC operated public tours out of the Kingston Penitentiary from June to October. The tour season was shorter during this first year of operations.

During this period of time, close to 60,000 visitors came to see what was behind the historic walls of the Kingston Penitentiary. Kingston Penitentiary Tours added a one-of-a kind tourism asset to Kingston's tourism portfolio. The estimated economic impact to the region was \$4.7 million as calculated through the Tourism Regional Economic Impact Model (TREIM). This model estimates the induced economic impact of tourism related activities in areas such as overnight accommodations, food and beverage, transportation, retail and entertainment. These tours provided full time employment for 40 college and university students as well as record visitation to partner museums including Canada's Penitentiary Museum.

The net profit generated in the first year was approximately \$644,000. Half of this amount was allocated to destination marketing for Kingston and the other half to the United Way of KFL&A for re-investment in youth programming.

The quick pace with which the Kingston Penitentiary Tours sold in 2016 demonstrated that demand far exceeded capacity (300,000 concurrent website users when 60,000 available tickets went on sale).

2017 Kingston Penitentiary Public Tours

Tours ran from May until the end of October 2017. Tours were conducted in both of Canada's official languages, with as many bilingual tour guides as possible to cater to the needs of visitors. Ticket prices increased from \$25 in 2016 to \$35 in 2017. Tuesday continued to be dedicated as "Kingston Days" with a discount on tours.

With most of the groundwork completed from the 2016 season, the 2017 season followed a similar operational plan with a continued heavy focus on visitor and staff safety as well as strong customer service components to ensure a high quality experience. Due to the extended length of time and number of tours, a more formal management structure was implemented to support a longer season.

In 2017, the public tours attracted 105,000 visitors and generated close to \$4.3M in total revenues and \$2.4M in net profit which was split 50/50 between the United Way of KFL&A and destination marketing which is managed by Tourism Kingston (TK) and the St. Lawrence Parks Commission. The economic impact as calculated by TREIM was \$8.4 million. Significant

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marketing investments were made in 2017 and 2018 in the international “Where am I” campaign and the “ONroute” campaign.

2018 Kingston Penitentiary Public Tours

Tours ran from May until the end of October 2018. 68,000 visitors generated a net profit of \$1.47M. Both SLPC and City staff recognize that the decrease from 2017 to 2018 was related to reduction in pent up demand to access the site as well as increased tourism in Canada during the sesquicentennial celebrations in 2017. Kingston Penitentiary still remains one of the most significant tourism assets in Kingston and was identified as a priority in the Destination Strategy endorsed by Council in 2019.

The City of Kingston continued to play an important role in facilitating this initiative. As per the previous agreements, the City continued to license portions of the Kingston Penitentiary from CSC for \$1 for the provision of public tours and, in turn, the City extended its agreement with the SLPC for the delivery of public tours.

2019 Kingston Penitentiary Public Tours

As part of the review of the 2019 partnership for the Kingston Penitentiary, access during civic holidays and for filming was added to the agreement. There have been filming production activities at the Kingston Penitentiary in 2019, including filming for a Netflix series. The number of visitors in 2019 was 72,500, a slight increase from 2018’s numbers. The total net profit was about \$1.625M with an estimated tourism regional economic impact of about \$6.31M.

The 2019 proposal introduced ticket pricing to make tours more affordable for families as well as to be more attractive to group tour operators and continued to provide accommodations for individuals with specific needs on all tours. The net profits from operations continued to be allocated 50/50 between the United Way of KFL&A and destination marketing. As per the previous agreements, the City continued to license portions of the Kingston Penitentiary from CSC for \$1 for the provision of public tours and, in turn, the City extended its agreement with the SLPC for the delivery of public tours.

Proposed Multi-Year Lease Agreement

In the past couple of years, City staff have been exploring the possibility of establishing a multi-year agreement with CSC to access KP for the purpose of delivering public tours and filming. One year agreements made it impossible for SLPC or TK to undertake any type of long term planning and marketing which impacted the ability to attract and sell to certain customers that make their travel plans well in advance.

Recently, and following the City Council motion from February 18, CSC and Public Safety and Emergency Preparedness (PSEP) staff connected with City staff to discuss details of a potential multi-year lease agreement. On February 27, City staff received a draft lease agreement for consideration. CSC has indicated that it is still its intent to dispose of the property in the long term.

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Term of the Lease

The term is proposed to be for a three (3) year period starting on April 1, 2020, with the option of five (5) one (1) year extensions, for a total potential of eight (8) years. It is proposed that the lease include an exit clause allowing both parties to terminate the lease with twelve (12) months' notice.

Cost of the Lease

It is proposed that the City pays PSEP a lease payment of \$100,000 per year with a 2% annual increase. While leasing the property, the City would no longer receive the current Payment In Lieu of Taxes (PILT) in the amount of \$474,000 (2019). Although this is not a direct payment to PSEP, it would be a loss in property tax revenues for the City and therefore, staff are proposing that net surpluses from the operations be utilized in part to reimburse this loss in PILT revenues to ensure that there are no impacts to property tax payers.

The City would also be responsible to pay up to \$550,000 per year in utilities and maintenance cost. Based on past expenditures (last three (3) years), the combined expenditures have been as high as \$850,000 per year. In order to minimize the risk and control costs, the City's contribution would be up to \$550,000 annually.

The total cost to the City would be up to \$1,124,000 per year. The only increase over the up to eight (8) years lease would be the 2% annual increase that would be applicable to the \$100,000 lease cost.

Operations, Revenues and Risk Mitigation

As per previous years, the City would continue to partner with SLPC and TK to deliver public tours, various activities, filming and other for-profit generating activities. The lease would limit the number of for-profit generation days to 110 per year in order to ensure that there is greater community use. It is important to clarify that for-profit generating activities means the site is being exclusively accessed by one user. For example, filming could possibly fall into this category. Activities that are accessible to the public at large, such as the public tours, are community uses and do not count toward the 110 days for-profit generating activities.

Based on previous years of operations, net profits ranged between \$644,000 and \$2,442,000. Having said that, 2016 only had a few of months of limited operations (\$644,000 net surplus) and 2017 was Canada's 150th which generated much higher revenues in the tourism industry across the country (\$2,442,000). 2018 and 2019 generated net profits of \$1,470,000 and \$1,625,000 respectively. Those two (2) years would be more in the range of net profits that can be expected in future years. It is also important to mention that although the number of visitors for public tours may reduce slightly in future years, additional activities would be introduced in order to stabilize net profits.

Should there be net profits after operational and lease costs, City staff are suggesting that a portion of those net profits could be redirected to United Way for reinvestment in local social

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programs to be identified jointly by the City and United Way KFL&A. The remainder of the net profits would be utilized to support tourism operations and marketing.

Should there be an operational deficit, City staff are suggesting that the deficit be funded by the Development Fund which collects about \$1M per year through the Municipal Accommodation Tax applicable to all hotels, motels and bed & breakfasts. This 4% tax is paid by visitors and supports tourism products and marketing to help attract more tourists to the City, which in turn increases the revenues into the fund. City staff will need to work with TK and Kingston Accommodation Partners (KAP) to secure this contribution, if required, from the Development Fund.

Existing Policy/By-Law:

None

Notice Provisions:

None

Accessibility Considerations:

None

Financial Considerations:

The total cost of the lease agreement for Kingston Penitentiary (KP) is up to \$1,124,000 per year. It is anticipated that operations of KP will generate annual net profits above \$1,124,000 as per the previous three (3) years of operation in order to ensure that the City will, at a minimum, be in a break even position. Any deficits could be covered by the Development Fund, therefore, not impacting the property tax payers.

Contacts:

Lanie Hurdle, Chief Administrative Officer 613-546-4291 extension 1231

Other City of Kingston Staff Consulted:

Alan McLeod, Acting City Solicitor

Others Consulted

Megan Knott, Executive Director, Tourism Kingston

Hollee Kew, General Manager/CEO, St. Lawrence Parks Commission

Exhibits Attached:

None