

RECOMMENDATIONS

1. Council authorizes the proposed lease subject to the following fundamental terms and conditions:

a. Property

PLAN 9311097

BLOCK 12

LOT 1

EXCEPTING THEREOUT ALL MINES AND MINERALS

AREA: 0.64 HECTARES (1.58 ACRES) MORE OR LESS

together with buildings and improvements

Municipally known as 2003 16 ST SE and 1650 20 AV SE

b. Parties

Lessor: The City of Calgary ("The City")

Lessee: Calgary Young Women's Christian Association

c. Consideration

\$25.00 plus GST payable on the Commencement Date.

d. Term and Commencement Date

Sixty-two (62) years commencing on January 1, 2021

e. Permitted Uses

The Lessee may use the Property to advance its charitable objectives to support women and their families with a continuum of programs and services focused on family violence prevention, mental wellness and women's economic prosperity (including without limitation for the purposes of constructing, operating, and maintaining a crisis shelter facility and affordable housing for women and children fleeing domestic violence and require housing options beyond their stay in shelter and for related services) and for no other purpose whatsoever without prior written consent from the Landlord, acting reasonably in its capacity as a municipal corporation.

f. Renewal Option

Provided the Lessee is not in default of the lease and The City, acting reasonably in its capacity as a municipal corporation, determines the Property is not required for municipal purposes, upon the same provisions, the Lessee shall have one (1) option to extend for a period of twenty-five (25) years.

g. Conditions Precedent

The Lessee agrees to surrender the Lease agreement dated 1982 December 16, as amended on 2022 April 6, between the Lessee and The City.

h. Special Terms and Conditions

- (i) The Lease will be subject to the terms and conditions of any tripartite agreement entered into between The City, the Lessee and Canada Mortgage and Housing Corporation ("CMHC"), such agreement to be subject to the approval of Council.
- (ii) The City acknowledges the following:
 - a. The Lessee has applied for Rapid Housing Initiative funding from CMHC to fund the construction of a new affordable housing building on the Property (the "Affordable Housing Project") subject to the Rapid Housing Initiative funding requirements set out in the funding agreement, dated 2022 January 10, entered into between CMHC and the Lessee (as amended, the "Contribution Agreement").
 - b. The Lessee has applied for funding under CMHC's National Housing Co-Investment Fund to fund the construction of a new crisis shelter facility on the Property (the "Crisis Shelter Project") and is subject to the National Housing Co-Investment Fund requirements set out in the funding agreement, dated 2022 March 11, entered into between CMHC and the Lessee (the "Shelter Co-Investment Agreement").
- (iii) This Lease will be a ground lease. The Lessee will retain ownership of all buildings and improvements constructed by or on behalf of the Lessee on the lands (the Affordable Housing Project and the Crisis Shelter Project) throughout the Term of the Lease during which time there shall be no transfer or assignment of such interest or ownership, in whole or in part, without prior written approval of The City, in its sole and unfettered discretion, provided that such approval will not be unreasonably withheld in the event of a transfer or assignment of such interest or ownership to an affiliate or to another social agency. If the Contribution Agreement or the Shelter Co-Investment Agreement have not expired or been earlier terminated, the prior written approval of The City and CMHC will be required. Following expiry or earlier termination of the Lease, ownership of the Affordable Housing Project and the Crisis Shelter Project will transfer to The City, however the Lessee shall be entitled to remove any or all of its trade fixtures, signage, unique design elements, equipment and personal property and shall be required to repair any damage caused by such removal on written request of the Landlord. For greater certainty, the Lessee shall not be required to demolish any buildings and improvements at the expiry or earlier termination of the Lease.
- (iv) The Lessee will not place or erect any buildings or capital improvements that cost more than \$100,000 in total combined project cost on the Property without first obtaining written approval from The City, which may be withheld at The City's discretion, acting reasonably in its capacity as a municipal corporation. For greater certainty the construction of a new building or the expansion of an existing building would require such approval if the combined project cost exceeded the \$100,000 threshold, but such approval would not be required for periodic repairs, replacements of building components or interior renovations (such as parking lot repaving/re-striping, roof

repairs/replacements, repairs, replacements or upgrades to building systems such as plumbing or HVAC, replacing flooring and lighting fixtures, etc.)

- (v) The Lessee shall be responsible, at its sole cost and expense, for the payment of all operating costs including but not limited to utilities, license fees, property taxes, and business taxes relating to the Property throughout the Term and any extension term.
- (vi) The Lessee accepts the Property on an “as-is” basis.
- (vii) Upon expiry of the Term, the Lessee shall perform an environmental site assessment (“ESA”) in accordance with The City of Calgary Environmental Site Assessment – Terms of Reference and if required, shall remediate, at its sole cost and expense, any contamination found on or under or migrating from the Property caused by the Lessee or its sublessees, contractors, invitees or clients; or any part thereof, as identified in the ESA, in order to return the Property, or any part thereof, to meet the applicable guidelines for commercial land use as regulated by any government authority, including Alberta Environment and The City’s Parks business unit, as applicable. For any contamination remediation that is completed, the Lessee shall provide a remediation certificate from the applicable government authority. All documentation shall be prepared by a qualified environmental professional and shall be reviewed to the satisfaction of The City.
- (viii) The Lessee shall be responsible for the maintenance, operation, repair, replacement, and renewal of, and all associated costs and expenses for or relating to the Property together with the facilities, appurtenances, machinery and equipment thereof including without limitation:
 - a. observing all relevant regulations and directions of building inspectors, health, fire or other officers or officials of any government authority;
 - b. maintaining the Property in a tidy, clean and sanitary condition;
 - c. promptly removing any graffiti and repairing or replacing anything damaged or destroyed by any act of vandalism or by any accident;
 - d. servicing, repairing and maintaining in good working order, and as necessary, replacing every part or element of the Property including all site, architectural, structural, mechanical and electrical elements, fixtures, machinery and equipment, including the building systems, structural elements, roof and retaining walls, and all utilities, and in each case, doing so in accordance with any applicable operation and maintenance manuals;
 - e. ensuring all heating and air conditioning equipment, water and sanitation lines, irrigation equipment and all utility lines within the Property are protected from frost and freezing and promptly replacing any of the same that may be damaged by frost, freezing or otherwise;
 - f. servicing and maintaining in good working order the sidewalks (within and adjacent to the Property), paths, stairs, ramps, other walkways, curbs,

c. the Lessee shall construct, alter, repair or improve in strict compliance with the working drawings, plans and specifications approved by The City, where such approval is required;

- d. during the construction, alteration, repair or improvement, the Lessee shall designate a Prime Contractor. If the Lessee fails to do so, the Lessee shall be deemed the Prime Contractor;
 - e. comply with all provisions of law including federal and provincial enactments, City bylaws and all governmental regulations relating to the construction and completion of the improvements;
 - f. for any capital improvements that cost more than \$100,000.00 in combined project costs, the Lessee shall have complete funding in place (by way of its own funds, financing and/or other third-party funding commitments) prior to commencing the capital improvement(s) including contingency budgeting; and
 - g. Upon completion of any improvements that cost more than \$100,000.00 in total combined project cost or for any improvements requiring a development permit, the Tenant shall provide to the Landlord a complete set of "as built" drawings for the improvements.
- (xi) The Lessee shall not assign the Lease in whole or in part or sublet all or any part of the Property whatsoever, without the prior written consent of the Landlord, which shall not be unreasonably withheld; and the Lessee shall be responsible for any and all administration costs incurred with the assignment of the Lease. Notwithstanding the foregoing: (a) the City will not unreasonably withhold its consent to the assignment of the Lease to an affiliate or to another social agency on the same terms and conditions; (b) the Lessee shall be permitted to grant subleases and licenses of entry and/or occupation to third parties from time to time without the Landlord's prior written consent; provided always that they are consistent with the Permitted Uses described above.
- (xii) The Lessee shall not allow any builders' liens or other liens, conditional sales contracts, chattel mortgages, personal property security agreements or similar claims or encumbrances against the Property for work or materials supplied to or on behalf of the Lessee. If any builders' liens are registered against the Property for work or materials supplied to or on behalf of the Lessee, then the Lessee shall discharge them promptly. Notwithstanding the foregoing, the Lessee shall be permitted to enter into a general security agreement and encumber its personal property (including without limitation, granting of security interests in all of its present and after-acquired personal property, in pieces of equipment and a floating charge on land), provided that the City's prior written consent shall be obtained in respect of any registration to be made against the certificate of title to the Property (such consent not to be unreasonably withheld so long as the instrument to be registered does not purport to mortgage or charge the City's interest in the Lease or the Property), and the Lessee may, with the prior written consent of The City, which consent shall not be unreasonably withheld, register a leasehold mortgage or a mortgage by way of sublease granted by the Lessee in connection with the financing of its leasehold or any improvements. At expiry or early termination of the Lease, the Lessee shall surrender any leasehold title and provide title free and clear of all encumbrances registered by or on behalf of the Lessee or by the

Lessee's creditors or lenders, including any leasehold mortgage, mortgage by way of sublease and any other security interests.

- (xiii) If the Lessee remains in possession of the Property after the expiration of the Term or any extension term, there shall be no tacit or other renewal of the Lease or extension of the applicable term, and the Lessee shall be deemed to be occupying the Property on a month-to-month basis, which shall be terminable upon thirty (30) days' written notice by either The City or the Lessee.
- (xiv) The Lessee shall develop and submit to The City for its approval, a detailed plan and procedure ("Hand Back Plan") for an orderly, timely and well-managed transition of the Property from the Lessee to The City five (5) years prior to the expiry of the Term or any extension term, if exercised and approved, or no later than six (6) months after the notice of termination is issued by either party.

Without limiting the generality of the foregoing, the Lessee shall ensure that at the expiry or earlier termination of this Lease, the Property is in a good state of repair having regard to its age and use, professionally cleaned, and shall peaceably surrender and yield vacant possession subject to the damage and destruction provisions set out in the lease and to reasonable wear and tear, and each part or component thereof functions properly and can be occupied and used for its intended purpose. If any substantial part of the Property fails to meet the above-noted requirements or standards, as determined by the City acting reasonably, the Lessee shall, at its cost, bring the same to such standard and satisfy such requirements prior to termination or expiry of the Lease (unless the City intends to demolish the improvements on the Property for road widening or for some other municipal purpose, in which case no such requirement shall apply).

- (xv) At the expiry or earlier termination of the Lease, the Lessee shall, at its sole cost and expense:
 - a. surrender all keys, pass cards, fobs and all other access, security, monitoring and control devices for the Property;
 - b. remove from the Property, prior to the expiry or earlier termination, any or all of the Lessee's trade fixtures, fittings and equipment, and the Lessee shall immediately repair, at the Lessee's cost and expense and to The City's satisfaction acting reasonably, all damage to the Property caused by such removal; and
- (xvi) If the Affordable Housing Project or the Crisis Shelter Project constructed on the Property (each such project referred to herein as a "Project") is substantially damaged or destroyed by fire or any other peril or act of God, then the following terms shall apply:
 - a. If:
 - 1. the Lessee (in consultation with CMHC insofar as the Contribution Agreement or the Shelter Co-Investment Agreement, as applicable has

not expired or been earlier terminated) elects not to restore and rebuild the Project;

2. or there are less than two (2) years remaining in the Term and The City (in consultation with CMHC insofar as the Contribution Agreement or the Shelter Co-Investment Agreement, as applicable has not expired or been earlier terminated), acting reasonably in its capacity as a municipal corporation, elects that the Project shall not be restored and re-built because the portion of the Property occupied by the Project is required by The City for municipal purposes;

then the Lease shall be terminated with respect to the portion of the Property utilized for that Project (as determined by The City and the Lessee acting reasonably) and the proceeds of the Lessee's insurance received by the Lessee and attributable to that Project will be distributed as follows:

1. first, to CMHC to the extent required in order to pay out all amounts owing to CMHC, if any, under the Contribution Agreement (or the Shelter Co-Investment Agreement), as applicable; and
 2. second, to The City to the extent required in order to pay out all amounts owing to The City, if any, under any funding or contribution agreements relating to that Project, up to the amount of The City's direct financial contribution towards that Project; and
 3. third, any balance remaining to the Lessee.
- b. Unless the Lease is terminated with respect to the portion of the Property utilized for that Project in accordance with paragraph a. above, the Lessee shall receive the proceeds of its property insurance and shall restore and re-build that Project (provided that the Lessee shall only be required to restore and rebuild that Project insofar as such insurance proceeds are made available to the Lessee, and further provided that such Project need not be rebuilt with the same plans and specifications so long as such Project is rebuilt in compliance with the terms and conditions of the Contribution Agreement or the Shelter Co-Investment Agreement, as may be applicable, and so long as the Permitted Use does not change).

- (xvii) In the event that the Lessee is in default of any provision of the Lease, The City shall provide written notice of such default to the Lessee and concurrently to CMHC. If the Lessee fails to remedy any default under the Lease within ninety (90) days of receipt of written notice of default by The City, CMHC shall have a period of one hundred twenty (120) days to cure such default on behalf of the Lessee prior to The City being able to exercise any right of termination. If the default has not been remedied after all cure periods have expired, The City shall give ninety (90) days' written notice to the Lessee and CMHC of its intention to terminate the Lease. Notwithstanding the foregoing, once the Contribution Agreement and the Shelter Co-Investment Agreement have expired or been earlier terminated, there shall no longer be any right to cure by CMHC and The

City shall no longer be required to provide any notice of default or notice of termination to CMHC.

- (xviii) If the Property is required for any municipal purposes by The City:
 - a. the Lease shall not be terminated by The City if the Contribution Agreement or the Shelter Co-Investment Agreement has not expired or been earlier terminated; or
 - b. if the Contribution Agreement and the Shelter Co-Investment Agreement have expired or been earlier terminated, then after the 40th anniversary of the Commencement Date the Lease may be terminated by The City on not less than two (2) years' written notice to the Lessee. Upon termination of the Lease, the City and the Lessee shall each immediately have the improvements on the Property appraised by an accredited appraiser for the Appraisal Institute of Canada and upon the value of the improvements being agreed upon between the parties, the City shall compensate the Lessee for the depreciated value of the improvements, amortized over a period of 50 years. Such depreciated value of improvements not to exceed the total project costs as set out in the Lease.
 - c. In the event The City and the Lessee cannot mutually agree on the value of the improvements amortized over 50 years, as set out in b. above, then either party may require arbitration of the dispute by giving written notice to arbitrate to the other. Each party shall at once appoint an arbitrator who shall be an accredited appraiser of the Appraisal Institute of Canada and the two arbitrators so selected shall appoint a third arbitrator who shall also be an accredited appraiser of the Appraisal Institute of Canada. The decision of any two of the three arbitrators so appointed shall be final and binding upon the parties hereto.
- (xix) During the term of the Contribution Agreement or Shelter Co-Investment Agreement, as applicable:
 - a. CMHC shall be entitled to participate in any arbitration or other dispute resolution process if such proceedings affect the Affordable Housing Project or the Crisis Shelter Project, as applicable;
 - b. the Lessor/property owner will not have a claim to moneys paid or payable by an expropriating body in priority to CMHC; and
 - c. CMHC shall have the right to enter the Property for the purpose of verifying that it is being used in accordance with the terms of the Contribution Agreement or Shelter Co-Investment Agreement, as applicable.