TO: Chair and Members
   Economic Development and Planning Committee

WARD(S) AFFECTED: WARD 2

COMMITTEE DATE: February 16, 2010

SUBJECT/REPORT NO:
Lease Renewal - 120 King Street West (Standard Life Building), Hamilton – Suite Nos. 900, 975, 1165 and 1170; Lessor- Fourth Phase Civic Square Limited (PED10040) (Ward 2)

SUBMITTED BY:
Tim McCabe
General Manager
Planning and Economic Development Department

PREPARED BY:
Darlene Cole
(905) 546-2424, Ext. 7910

RECOMMENDATION:

(a) That City Council renew an existing lease with Fourth Phase Civic Square Limited Partnership subject to the following terms and conditions in the premises known as 120 King Street West:

(i) Term:

   Ninth Floor: Five (5) years commencing September 1, 2009 and terminating on August 31, 2014;

   Eleventh Floor: Continue existing overhold tenure until Waste Management and Human Resources (Return to Work) staff are relocated;

(ii) Property: 120 King Street West, Hamilton comprising 42,469 square feet, distributed as follows:
(iii) **Rental Rate:** From the date of commencement, meaning from September 1, 2009, the City shall pay rent based on $10.50 per square foot, plus GST/HST, and operating expenses for the area occupied on the ninth floor; the eleventh floor space will continue to be occupied at an overhold rent of $8.92 per square foot, plus GST/HST, and operating expenses;

(iv) **Operating Costs:** The City shall be responsible for its share of the operating costs, in 2010 projected at $9.53 per square foot, plus GST/HST;

(b) That all rent and operating costs will be funded from Account No. 55358 and each Lessee’s lease expenses will be paid from their respective Deptid budgetary allocations;

(c) **Special Conditions:**

That the Landlord shall replace the ninth floor carpeting with 28 oz. commercial grade carpet including moving the existing furniture and completing the work after hours, at its own cost;

(d) That the public washrooms on the ninth and eleventh floors be updated by the Landlord to meet current AODA accessibility standards;

(e) That Legal Services be authorized to prepare a by-law under Section 110 of the Municipal Act to propose the leased space become a City Capital Facility, whereby the City would be exempt from paying Realty Taxes at this location;

(f) That the Mayor, General Manager, Finance and Corporate Services and City Clerk be authorized and directed to execute the Lease renewal in a form satisfactory to Corporate Counsel.

**EXECUTIVE SUMMARY**

This report provides direction to staff to enter into a lease renewal with the owner of 120 King Street West to accommodate Corporate Services, Human Resources and Waste
Management, until permanent office space becomes available. It is anticipated that eleventh floor staff will be relocated via the new Accommodation Strategy which will be implemented upon completion of City Hall renovations.

**Alternatives for Consideration - Page 6**

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<tr>
<th>FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)</th>
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<td><strong>Financial:</strong> There will be an increase to the annual lease operating budget of $83,240. The proportionate share of the increase in annual operating costs will be accommodated within the departments’ annual operating budget(s).</td>
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<td><strong>Staffing:</strong> Staff will take the necessary steps to complete the lease.</td>
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<td><strong>Legal:</strong> Legal Services Section has been involved in the development of the Lease Agreement and will continue its involvement until the lease transaction is completed. It will also provide its assistance in designation of the premises as a Municipal Capital Facility under Section 110 of the Municipal Act.</td>
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<th>HISTORICAL BACKGROUND (Chronology of events)</th>
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<td>This leasehold consists of space on the ninth and eleventh floors in the Standard Life Building, situated on the n/e corner of King and Bay Streets, as shown on Appendix “A” to Report PED10040. The City has occupied space in this building since June 2001, renegotiating and renewing this lease as the terms expired. The latest lease contract expired on March 31, 2008; since then, the City has occupied the space as an “overhold” tenant.</td>
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<td>Until the City’s Accommodation Strategy is implemented, continued occupancy of this space is required. Council passed a motion to allow for this lease extension on March 26, 2008; subsequently, staff in Public Works directed Real Estate to renew the existing lease until such time as new premises are available.</td>
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<td><strong>Ninth Floor – 32,549 Square Feet</strong></td>
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<td>Staff has negotiated a term of five (5) years for the ninth floor where the rent will increase to $10.50 per square foot, plus GST/HST, from $7.75 per square foot. On an annual basis, the rent will amount to $341,764.50 plus GST/HST, and operating costs. For the Ninth floor space, the Landlord has agreed to replace the carpeting, including removal and replacement of furniture, at its own cost.</td>
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Eleventh Floor – 9,920 Square Feet

The rent and tenure for the eleventh floor space will continue on the basis of an overhold at $8.92 per square foot, plus GST/HST, plus operating costs. Annually, the rent will amount to $88,486.40 plus GST/HST, plus operating costs. The majority of this space is held by Waste Management staff which will be relocated to City Centre in 2010.

Approximately 1,610 square feet of eleventh floor space is occupied by Human Resources’ Return to Work group, also to be relocated; Corporate Facilities Management is currently working, in conjunction with the user groups, to determine space requirements.

Operating Expenses

As before, the City will pay its share of Operating Costs, projected at $9.53 per square foot in 2010. Monthly, the rent and operating costs will amount to $69,580.20, plus GST/HST. On a square foot basis, this lease renewal will amount to rent and operating costs amounting to $19.66 per square foot, per annum.

A downtown office survey prepared by Blair, Blanchard Stapleton Limited dated December 2008 summarizes rates for the major office complexes in Hamilton’s core. The foregoing rate is reflective of the current cost of similar space in the City’s core.

POLICY IMPLICATIONS

City Council at its meeting of March 26, 2008, passed the following Motion “City’s Policy Respecting Contracting with Parties involved in Litigation with the City of Hamilton

(a) That the City temporarily waive its policy respecting contracting with parties with whom it is engaged in litigation as it would apply to Yale Properties in order to:

   (i) Continue its current tenancies with Yale Properties on a short-term basis; and,
   (ii) Continue discussions with Yale Properties with the goal of establishing a mutually-advantageous solution which will enable the City and Yale Properties to resolve the ongoing litigation, renew its leases, and have a sound business relationship going forward into the future.

(b) That the General Manager of Public Works and the City Solicitor report back to the Committee of the Whole with respect to this matter no later than the end of September, 2008”.

Vision: To be the best place in Canada to raise a child, promote innovation, engage citizens and provide diverse economic opportunities.

Values: Honest, Accountability, Innovation, Leadership, Respect, Excellence, Teamwork
The recommendation before Committee and Council is consistent with clause (a)(ii) as enacted by City Council.

The recommendation is also consistent with the City’s Real Estate Management Portfolio Strategy Plan as approved by City Council on November 24, 2004, and the “Procedural By-law for the Sale of Land”, By-law 04-299. This By-law and in accordance to Item 21, Committee of the Whole Report 01-029 adopted by Council on September 18, 2001 as amended by Item 9, Corporate Administration Committee Report 05-011 adopted by Council on June 29, 2005, City Council approved the Delegation of Authority to staff for the acquisition, disposition or lease of properties as follows:

General Manager or designate not exceeding $150,000; and to the City Manager or designate not exceeding $250,000.

Since the amount of the lease payments are in excess of the above referenced limits, Council approval must be sought to approve the recommendations contained within this report.

RELEVANT CONSULTATION

- Corporate Services, Budgets and Finance Division
- Corporate Services, Legal Services Division
- Public Works, Facilities Services Section
- Public Works, Operations and Waste Management Division
- City Managers Office, Human Resources Division
- Portfolio Management Committee has reviewed, approved and recommends the proposed lease

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

If this lease recommendation is not adopted, the City will need to relocate Corporate Services, Human Resources, and Operations and Waste Management staff to other office buildings in the downtown core. This would incur significant relocation costs (brokerage fees and all of the costs associated with fitting up new premises, including architectural and space planning consultants). Replicating the amount of space required by these departments would become a challenge and some staff may need to be separated in order to fit accommodation needs to available space.
ALTERNATIVES FOR CONSIDERATION:
(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

The City does not have a contractual lease agreement with this Landlord, and is therefore occupying the space as an "overhold" tenant. Searching for alternative space would require additional capital outlay.

CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)


Skilled, Innovative & Respectful Organization
• n/a

Financial Sustainability
• n/a

Intergovernmental Relationships
• Maintain strategic relationships with other City departments.

Growing Our Economy
• n/a

Social Development
• n/a

Environmental Stewardship
• n/a

Healthy Community
• n/a

APPENDICES / SCHEDULES

Appendix “A” to Report PED10040