SUBJECT: Lease – 21 King Street West, Suite 1101 and 1200 - MVD Properties Inc. (PED09282) (Ward 2)

RECOMMENDATION:

(a) That the City of Hamilton enters into a new lease agreement with MVD Properties Inc. for the property known as Suite 1101, 21 King Street West, Hamilton, subject to the following terms:

(i) Term: 9 year, 10 month term commencing November 1, 2009, terminating August 31, 2019.

(ii) Property: Comprised of Suite 1101, 21 King Street West, with a total rentable area of 288.6 square metres (3,107 square feet) more or less as shown on Appendix "B" attached to Report PED09282.

(iii) Rental Rate: November 1, 2009 to August 31, 2010, $24,597.10, (Net) per annum, $2,459.71. per month, plus G.S.T. The rental rate is $9.50 net, per square foot.

September 1, 2010 to August 31, 2014, $29,516.50, (Net) per annum, $2,459.71. per month, plus G.S.T. The rental rate is $9.50 net, per square foot.

September 1, 2014 to August 31, 2019, $31,070.00 (Net) per annum, $2,589.17 per month, plus G.S.T. The rental rate is $10.00 net, per square foot.
(iv) Operating Costs: Operating costs which were estimated at $7.50 per square foot in 2007, $23,302.50 per annum or $1,941.88 monthly plus G.S.T. The operating costs reflect that the premises will be designated as a City Capital Facility and exempt from property taxes.

(v) Parking: One underground parking space will be provided at market rate.

(vi) Payment: All rent and operating costs are to be paid monthly and charged to Risk Management Services Section against Account No. 791530-357005.

(vii) Special Conditions: The landlord agrees to provide the premises to the tenant 3 months free gross rent to allow the tenant time to complete all tenant improvements as shown on Appendix “B” attached to Report PED09282. It should be noted that the 3 months free gross rent effectively reduces the rental rate to $9.29 per square foot throughout the entire lease term.

The City shall not be required to demolish the existing tenant improvements at the termination of the lease term however the City is allowed to remove all Teknion cubicles.

A rent abatement clause will be included in the lease agreement.

The landlord agrees to co-operate fully with the tenant’s project consultants and contractors to ensure that construction of the tenant improvements proceed without incident, delay or loss of access in any way.

(viii) Option to Renew: Upon 6 months written notice before expiry of the 9 year, 10 month term, (August 31, 2019) the City of Hamilton will have the option to renew the lease for an additional 5 year term under the same terms and conditions as this lease, save for the rental rate, which will be negotiated at market levels.
Lease: The lease shall be prepared by the Landlord in accordance with the terms and conditions contained within the Landlord’s Letter of Intent and shall be subject to the City’s solicitor being completely satisfied with the terms contained therein.

(b) That the Legal Services Division be authorized to prepare a by-law, under Section 110 of the Municipal Act, to propose that the 11th floor premises become designated as a City Capital Facility, whereby the City would be exempt from paying realty taxes at this location.

(c) That the Mayor, General Manager of Finance and Corporate Services and City Clerk be authorized and directed to execute the Lease in a form satisfactory to the City Solicitor and subject to all taxes being paid in full unless otherwise directed by the General Manager of Finance and Corporate Services.

(d) That the Legal Services Division be allowed to assume the space previously occupied and shared by Risk Management Services Section at Suite 1200, 21 King Street West, Hamilton, subject to the following terms:

(i) Term: Assume Risk Management’s share of the remaining existing lease as of November 1, 2009 terminating August 31, 2014. Risk Management Services Section will no longer be responsible or obligated to honour any terms and conditions of that lease for the remainder of the term.

(ii) Property: Comprised of 21 King Street West, 12th floor, with a rentable area of 184.4 square metres (1,985 square feet) more or less. Note: Legal Services Division will now occupy the entire 12th floor, as shown on Appendix “C” attached to Report PED09282.

(iii) Rental Rate: The rate for the remainder of the term will be as follows:

- November 1, 2009 to October 31, 2013, $18,857.50 (Net) per annum, $1,571.46 per month, plus G.S.T.
- November 1, 2013 to August 31, 2014, $15,714.58 (Net) per annum, $1,291.46 per month. The rental rate agreed to September 1, 2009 is $9.50 net, per square foot.

(iv) Operating Costs: Operating costs which were estimated at $7.50 per square foot in 2007, $14,887.50 per annum or $1,240.63 monthly plus G.S.T. The operating costs reflect that the premises have been designated as a City Capital Facility and are exempt from property taxes.
Payment: All rent and operating costs are to be paid monthly and charged to Legal Services Division against Account No. 55358-791530.

Special Conditions: The Landlord, at its expense, contractually agreed to clean and shampoo the broadloom annually throughout the term of the lease.

A rent abatement clause was included in the existing lease agreement.

Option to Renew: Upon 6 months written notice before expiry of the first 5 year term, (August 31, 2014) the City of Hamilton has the option to renew the lease for an additional 5 year term under the same terms and conditions as this lease, save for the rental rate, which will be negotiated at market levels.

EXECUTIVE SUMMARY:

This report provides staff direction to enter into a new lease with MVD Properties Inc., the owners of 21 King Street West. By entering into an additional lease, it will enable Risk Management Services Section to relocate from space it currently shares with Legal Services Division on the 12th floor, to new space on the 11th floor. The proposed relocation will allow Risk Management Services Section to expand its operation, provide for increased staff security and create more efficient centralized storage of files, while still allowing the Section to enjoy a close working relation with Legal Services Division. In addition, the relocation will allow Legal Services Division to expand its operations by assuming the space vacated by Risk Management Services Section. The additional space will allow Legal Services Division to bring in contract lawyers when and as necessary to deal with time limited issues such as Official Plan Appeals, Metrolinx/LRT contracts and documentation, and Federal-Provincial stimulus infrastructure project contracts. The move allows both client services to continue their symbiotic relationship and mutual use of the law library and files.
BACKGROUND:

The City of Hamilton, has leased the 12th floor location as office space since September 1, 2001. The most recent lease renewal for the premises covered the period from September 1, 2009 to August 31, 2014. The rent renewed was regarded as being below market levels. In response to a request by Legal Services Division, Risk Management Services Section was asked to consider relocating to a nearby floor, to allow both client services the opportunity to expand and to operate in a more efficient manner. Suitable space was found on the abutting 11th floor. The proposed new rent to be paid by Risk Management Services Section for the 11th floor space will be at the same rate of $9.50 net per square foot for the first 4 years, 10 months. During the last 5 years of the term, the rent will escalate to $10.00 net per square foot. The maturity date of the lease was coordinated to coincide with the 12th floor lease, should the renewal option be exercised by Legal Services Division on August 31, 2014. The 12th floor premises are designated as a City Capital Facility, as will be the 11th floor premises.

The property at 21 King Street West is one of the premiere office buildings in downtown Hamilton, located close to City Hall, the City Centre, Jackson Square plus the Registry Office and both Court Houses. The recent lease renewal of the 12th floor premises shared by both the Risk Management Services Section and the Legal Services Division demonstrated their mutual commitment to the location.

ANALYSIS OF ALTERNATIVES:

Risk Management Services Section and Legal Services Division have shared space on the 12th floor since 2001. An alternative is not to lease additional space on the 11th floor; however, in 2005, Legal Services Division absorbed 17 additional staff members without acquiring additional space. Since then, both client services have been extremely cramped for space, having no additional room for expansion.

There are no other areas of a suitable size to lease within 21 King Street West. The alternative of not leasing the proposed space on the 11th floor would require Risk Management Services Section to seek rental space in a nearby building. Any rent negotiated would be more costly than the below market rents that have been recently negotiated at 21 King Street West.

FINANCIAL/STAFFING/LEGAL IMPLICATIONS:

Financial: The immediate impact is the rental rate which is considered to be slightly below market levels. The 12th floor premises are designated as a City Capital Facility and exempt from property taxes. The proposed 11th floor premises will also be designated as a City Capital Facility to be exempted. The $7.50 per square foot additional expense cost, paid by each client service reflects the tax exempt status. In addition to lease costs, are one-time costs associated with tenant improvements and moving staff. The client services agreed to split the costs equally.
Without additional office space to accommodate contract lawyers, it will be necessary for Legal Services Division to use outside legal counsel at a considerably higher rate.

It is further noted that the Landlord is in arrear of their taxes and the Landlord and the City have entered into a repayment schedule for the non-payment of taxes pursuant to the provisions of the Municipal Act. Administration of the repayment schedule is being monitored and enforced through the City’s Tax Division.

**Staffing:**

It is understood that by assuming Risk Management Services Section existing space, Legal Services Division will be able to hire contract lawyers when and as necessary to deal with time limited issues such as Official Plan appeals, Metrolinx/LRT contracts and documentation, and Federal-Provincial stimulus infrastructure project contracts, and have space for law students to work at no cost as interns year-round.

Risk Management Services Section has no immediate plans for additional staff; however, the layout selected does provide room for one additional staff member or to accommodate visiting out-of-town lawyers.

**Legal:**

The proposed lease agreement will be prepared by the Landlord subject to the approval of the Legal Services Division.

**POLICIES AFFECTING PROPOSAL:**

This recommendation is consistent with the Real Estate Management Portfolio Strategy Plan, as approved by Council on November 24, 2004, to lease property in support of municipal programs and needs. This proposed lease with MVD Properties Inc. reflects market rents related to accommodation within a prime downtown office building.

City Council, in approving the Consolidation of Routine Real Estate Matters, authorized the delegation of authority to approve the acquisition, disposition or lease as follows: to the General Manager or designate for a lease value not exceeding $150,000 annual rental; to the City Manager or designate for a lease value not exceeding $250,000 annual rental. Although the amount contained in the aforementioned recommendations are not in excess of these limits, we are required to seek City Council approval for the adoption of this report as the proposed lease has a 9 year, 10 month term.

**CONSULTATION WITH RELEVANT DEPARTMENTS/AGENCIES:**

- Legal Services Division, Corporate Services Department
- Risk Management Section, Corporate Services Department
- Facility Services, Public Works Department
- Portfolio Management Committee has reviewed, approved and recommends the proposed lease.

**CITY STRATEGIC COMMITMENT:**

By evaluating the “**Triple Bottom Line**”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

- Community Well-Being is enhanced. □ Yes ☑ No
- Environmental Well-Being is enhanced. □ Yes ☑ No
- Economic Well-Being is enhanced. □ Yes ☑ No

Does the option you are recommending create value across all three bottom lines? □ Yes ☑ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? □ Yes ☑ No

JH/sd
Attachs. (3)