

City of Nanaimo
REPORT TO COUNCIL

DATE OF MEETING: 2013-OCT-07

AUTHORED BY: BILL CORSAN, MANAGER, REAL ESTATE

RE: 100 GORDON STREET – ACCEPTANCE OF PROJECT UNDER “REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143”

STAFF RECOMMENDATION:

That Council accept the proposal presented by SSS Manhao International Tourism Group for the hotel at 100 Gordon Street under “REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143”.

PURPOSE:

The purpose of this Staff report is to obtain Council approval to accept the SSS Manhao International Tourism Group's hotel proposal at 100 Gordon Street under “REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143”.

BACKGROUND:

At the Council meeting of 2013-JUL-22, the following resolutions were passed with regard to the sale of the City-owned property at 100 Gordon Street for a hotel to anchor the Vancouver Island Conference Centre (VICC).

That Council:

1. accept the Offer to Purchase, dated for reference 2013-JUN-19 (the “Offer”), from SSS Manhao International Tourism Group (Canada) Co. Ltd. (“Manhao”);
2. authorize the Mayor and Corporate Officer to execute the Offer and deliver it to Manhao;
3. authorize Staff to do all such acts necessary to give effect to the Offer; and
4. authorize all further steps and proceedings contemplated by the Offer and authorize the execution and delivery of the closing documents (as defined in the Offer), in the form acceptable to the City Manager.

Two of the closing documents; the Development Permit and Revitalization Tax Exemption (RTE) Agreement require formal Council approval. Staff is returning to this meeting with the completed Tax Exemption Agreement requesting Council acceptance of the Manhao project under the Tax Exemption Bylaw.

DISCUSSION:***Hotel Proposal***

The Manhao project at 100 Gordon Street proposes a 240-unit hotel on 21 floors with a total floor area of 16,958m². The building includes a swimming pool, retail shops, gym and spa. The project includes commercial units on the lower three floors and two restaurants on the 21st floor. The design includes 2 overhead pedestrian connections – one to the VICC and the other to Piper Park.

A more detailed description of the project is available in the accompanying Staff report on this evening's agenda - Development Permit 854 – 100 Gordon Street.

Conditions Precedent

The Offer to Purchase approved by Council on 2013-JUL-22 set out a number of conditions precedent that must be satisfied by both the City and Manhao prior to the transfer of the property. The conditions are to be removed by 3 key dates.

Removal Date: 2013-AUG-22

- Manhao to be satisfied with title; and
- Manhao to review documents associated with property.

Removal Date: 2013-OCT-21

- Manhao's satisfaction with the results of due diligence relating to services,
- Manhao's satisfaction of the environmental condition of the lands;
- Manhao's satisfaction that it will be able to create strata lots;
- Manhao's satisfaction that it will be able to enter into a Tax Exemption Agreement;
- completion of a Right of First Negotiation to allow Manhao to enter into a Management Agreement for the VICC should the existing manager be terminated;
- Parking Agreement for 255 non exclusive parking spaces at VICC;
- Option to Purchase by City should project not commence construction within 18 months;
- development covenant to ensure building is constructed within 3 years and is rated as 4 diamond or better;
- walkway easement to VICC; and
- easement to Piper Park.

Removal Date: 2013-DEC-20

- Approval of the development permit.

“REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143”

The objectives of the RTE program are to:

- encourage new hotel and motel investment in the City of Nanaimo;
- promote a higher standard of overnight accommodations and enrich the visitor's experience while staying in the City of Nanaimo; and
- generally reinforce the City's commitment to the long -term development of the tourism industry.

The program is applied to all major renovations, additions, demolition and rebuild and new construction associated with hotels and motels. The RTE only applies to the municipal tax portion and only applies to the increase in assessment resulting from the capital improvement. The programs runs for a maximum length of 10 years.

The Manhao project will be the first hotel project to be applied under the RTE program. A copy of the complete RTE Agreement is located in Attachment A.

Strategic Plan Considerations

The disposition of this parcel of land meets a number of the key priorities identified in the 2012-2015 Strategic Plan, including;

Strategy	
Taking Responsibility	<p>Potential Strategies and/or Initiatives</p> <ul style="list-style-type: none"> Continuing to facilitate change and overall development consistent with vision and plans; taking action steps to be a catalyst or investment in the City's future.
Community Building Partnerships	<p>Successful City Initiative</p> <ul style="list-style-type: none"> Commitment to collaborate with organizations and groups to explore how the City can become one of BC's most successful cities.
4 Sustainability Pillars – Ongoing Commitments to Policy, Goals and Action Plans	<p>Economic Health</p> <ul style="list-style-type: none"> Support for Nanaimo Downtown Plan Completion of Vancouver Island Conference Centre and incentives to conference hotel development. Hotel Revitalization Tax Exemption

Respectfully submitted,



Bill Corsan
 MANAGER,
 REAL ESTATE



Ian Howat
 ACTING GENERAL MANAGER
 CORPORATE SERVICES

CITY MANAGER COMMENT:

I concur with the Staff recommendation.

2013-SEP-26
 LD001167
 WC/tl

Revitalization Tax Exemption Agreement

THIS AGREEMENT dated for reference the 1st day of October, 2013 is

BETWEEN:

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD.
Suite 270, 10711 Cambie Road
Richmond, B.C.
V6X 3G5

(the "Owner")

AND:

CITY OF NANAIMO
455 Wallace Street
Nanaimo, B.C.
V9R 5J6

(the "City")

GIVEN THAT:

- A. The Owner is entitled to become the registered owner in fee simple of lands in the City of Nanaimo located at 100 Gordon Street, legally described as Parcel Identifier: 026-126-002, Lot A Section 1 Nanaimo District and of the Bed of the Public Harbour of Nanaimo Plan EPP30518 (the "Parcel");
- B. Council has established a revitalization tax exemption program and has included within the City of Nanaimo "REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143" the designation of a land use zone which includes the Parcel as a revitalization area; and
- C. The Owner proposes to construct new improvements or alter or renovate existing improvements on the Parcel as described in Appendix "A" attached to and forming part of this agreement (the "Project") and has applied to the City to take part in the revitalization tax exemption program in respect of the Project and the City has agreed to accept the Project under the program;

THIS AGREEMENT is evidence that in consideration of the promises exchanged below, the Owner and the City covenant and agree each with the other as follows:

1. In this Agreement, the following words have the following meanings:
 - a. "Assessed Value" means the BC Assessment Authority land and improvements assessed value of the parcel subject to an Agreement for the purposes of calculating property taxes;
 - b. "Baseline Assessment" means the BC Assessment Authority's last published land and improvements assessed value immediately before the commencement of the Project;
 - c. "Bylaw" means City of Nanaimo "REVITALIZATION TAX EXEMPTION BYLAW 2011

NO. 7143” as amended from time to time or including any subject amendments thereto;

- d. “Project” means a revitalization project on a Parcel involving the construction of a new improvement, alteration or renovation of an existing improvement, which meets the requirements of the Bylaw, and the construction of which is begun after an application for a Tax Exemption has been submitted to, and approved by, Council;
 - e. “Renovation” means capital improvements that achieve any one or more of the following: adds services; adds rooms; improves the quality of the stay for the visiting public;
 - f. “Tax Exemption” means a revitalization tax exemption determined in accordance with the Bylaw;
 - g. “Tax Exemption Certificate” means a revitalization tax exemption certificate issued by the City of Nanaimo pursuant to the Bylaw and the *Community Charter*.
2. The Project – The Owner will use its best efforts to ensure that the Project is constructed, maintained, operated and used in a fashion that will be consistent with and will foster the objectives of the revitalization tax exemption program, as outlined in the Bylaw. Without limiting the generality of the foregoing, the Owner covenants to use its best efforts to ensure that the Project will operate as at least a four-diamond hotel under the CAA/AAA diamond rating system in accordance with the development covenant to be granted by the Owner to the City and registered on title to the Parcel at the time the Owner acquires title to the Parcel (the “Development Covenant”).
3. Operation and Maintenance of the Project – Throughout the term of this agreement, the Owner shall operate, repair and maintain the Project and will keep the Project in a state of good repair as a prudent owner would do.
4. Revitalization Tax Exemption – Subject to fulfillment of the conditions set out in this agreement and in the Bylaw, the City shall issue a revitalization tax exemption certificate to the British Columbia Assessment Authority entitling the Owner to a property tax exemption in respect of the property taxes due (not including local service taxes) in relation to the improvements on the Parcel (the “Tax Exemption”) for the calendar year(s) set out in this agreement. The Tax Exemption Certificate shall be substantially in the form of Appendix “B”, which is attached to and forms part of this agreement.
5. Conditions – The owner must fulfill the following conditions before the City will issue a Tax Exemption Certificate to the Owner in respect of the Project:
- a. the Owner must complete the purchase of the Parcel in accordance with the terms of the Offer to Purchase between the Owner and the City dated for reference June 19, 2013;
 - b. the Owner must obtain a development permit from the City for the Project on or before December 20, 2013;
 - c. the Owner must complete or cause to be completed construction of the Project in a good and workmanlike fashion and in strict compliance with the development permit attached hereto as Appendix “C”;

- d. the Project must be officially opened and operating as at least a four-diamond hotel under the CAA/AAA diamond rating system in accordance with the Development Covenant (the "Exempt Use") and for no other use, by no later than June 20, 2018;
 - e. the completed Project must substantially satisfy the performance criteria set out in the Development Covenant , as determined by the City's Land Use Manager or designate, in his or her sole discretion, acting reasonably.
6. Calculation of Revitalization Tax Exemption – The amount of the Tax Exemption in each year shall be equal to that part of the municipal portion of property taxes calculated by deducting the Baseline Assessment from the current Assessed Value and applying the difference to the current municipal tax rate.
 7. Term of Tax Exemption – Provided the requirements of this agreement, and of the City of Nanaimo Revitalization Tax Exemption Bylaw No. 7143 are met, the Tax Exemption shall apply to taxation in the year following issuance of the Tax Exemption Certificate (unless the Tax Certificate is issued after October 31, in which case the Tax Exemption shall apply to the second taxation year following issuance of the Tax Exemption Certificate), and shall continue for a term of 10 years, unless the Tax Exemption Certificate is cancelled pursuant to section 11 of this agreement.
 8. Compliance with Laws – The Owner shall construct the Project and, at all times during the term of the Tax Exemption or any renewal term, use and occupy the Parcel forming part of the Project in compliance with all statutes, laws, regulations, bylaws and orders of any authority having jurisdiction and, without limiting the generality of the foregoing, all federal, provincial, or municipal laws or statutes or bylaws, including all the rules regulations policies guidelines criteria or the like made under or pursuant to any such laws.
 9. Subdivision under Strata Property Act – If the Owner deposits a strata plan in the Land Title Office under the *Strata Property Act* that includes an improvement on the Parcel included in the Project, then the Tax Exemption shall be prorated among the strata lots in accordance with the unit entitlement of each strata lot for:
 - a. the current and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office before May 1; or
 - b. for the next calendar year and each subsequent tax year during the currency of this agreement if the strata plan is accepted for registration at the Land Title Office after May 1;provided that any strata subdivision must comply with the terms of any Housing Agreement in relation to the Parcel or the Project which limits ability to subdivide the Parcel or a building on the Parcel under the *Strata Property Act*.
 10. Representations and Warranties – The Owner represents and warrants to the City that the Owner is the Owner of the Parcel for the purpose of property assessment and taxation.
 11. Cancellation – The City may in its sole discretion cancel the Tax Exemption Certificate at any time:
 - a. on the written request of the Owner; or

- b. effective immediately upon delivery of a notice of cancellation to the Owner if at any time any of the conditions in the Tax Exemption Certificate are not met.
- 12. If such cancellation occurs, the Owner of the Parcel for which the Tax Exemption Certificate was issued will pay to the City within 30 days of cancellation an amount equal to the percentage of the amount of any Tax Exemption equivalent to the percentage of the year remaining from the date of cancellation.
- 13. If the amount is not paid under section 12, any amount unpaid will bear interest at a rate of 1.0% per month, compounded annually.
- 14. No Refund – For greater certainty, under no circumstances will the Owner be entitled under the City's revitalization tax exemption program to any cash credit, any carry forward tax exemption credit or any refund for any property taxes paid.
- 15. Notices – any notice or other writing required or permitted to be given hereunder or for the purposes hereof to any party shall be sufficiently given if delivered by hand or posted on the Parcel, or if sent by prepaid registered mail (Express Post) or if transmitted by facsimile to such party:

- a. in the case of a notice to the City, at:

CITY OF NANAIMO
455 Wallace Street,
Nanaimo, B.C.
V9R 5J6

Attention: Ian Howat

Fax No.: (250) 754-8263

- b. in the case of a notice to the Owner, at:

SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD.
c/o Kahn Zack Ehrlich Lithwick LLP
Suite 270, 10711 Cambie Road
Richmond, B.C.
V6X 3G5

Attention: Perry S. Ehrlich

Fax No.: (604) 270-8282

Or at such other address as the party to whom such notice or other writing is to be given shall have last notified the party giving the same.

- 16. No Assignment – The Owner shall not assign its interest in this agreement except to a subsequent owner in fee simple of the Parcel.
- 17. Severance – If any portion of this agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this agreement.

18. Interpretation – Wherever the singular or masculine is used in this agreement, the same shall be construed as meaning the plural, the feminine or body corporate where the context or the parties thereto so require.
19. Further Assurances – The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this agreement.
20. Waiver – Waiver by the City of a default by the Owner shall be in writing and shall not be deemed to be a waiver of any subsequent or other default.
21. Powers Preserved – This agreement does not:
 - a. affect or limit the discretion, rights or powers of the City under any enactment or at common law, including in relation to the use or subdivision of the Parcel;
 - b. affect or limit any enactment relating to the use or subdivision of the Parcel; or
 - c. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Parcel, and without limitation shall not confer directly or indirectly any exemption or right of set-off from development cost charges, connection charges, application fees, user fees or other rates, levies or charges payable under any bylaw of the City.
22. Reference – Every reference to each party is deemed to include the heirs, executors, administrators, personal representatives, successors, assigns, servants, employees, agents, contractors, officers, licensees and invitees of such party, wherever the context so requires or allows.
23. Enurement – This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this agreement as of the day and year first above written.

Executed by **CITY OF NANAIMO** by its authorized signatories:

Mayor

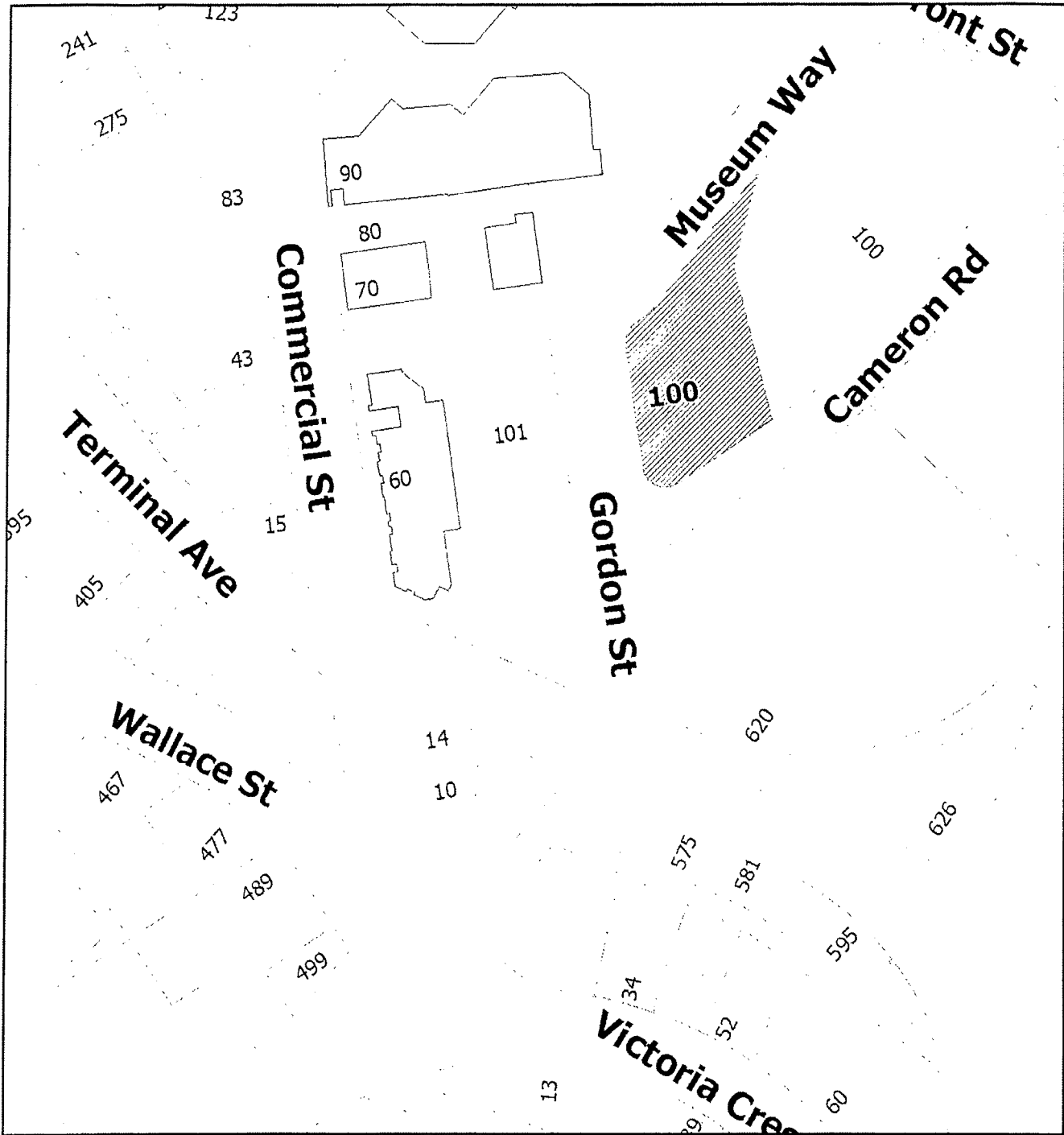
Corporate Officer

Executed by **SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD.** by its authorized signatories:

Name:

Name:

APPENDIX A



Revitalization Tax Exemption Agreement

LOCATION PLAN

Civic: 100 Gordon Street
Lot A, Section 1, Nanaimo District and of the
bed of the Public Harbour of Nanaimo,
Plan EPP30518



 **Subject Property**

APPENDIX "B" to Revitalization Tax Exemption Agreement

Tax Exemption Certificate

In accordance with the City of Nanaimo "REVITALIZATION TAX EXEMPTION BYLAW 2011 NO. 7143" (the "Bylaw"), and in accordance with a Revitalization Tax Exemption Agreement dated for reference the 1st day of October, 2013 (the "Agreement") entered into between the City of Nanaimo (the "City") and SSS MANHAO INTERNATIONAL TOURISM GROUP (CANADA) CO. LTD. (the "Owner"), the registered owner(s) of the lands located at 100 Gordon Street, Nanaimo, B.C., legally described as Parcel Identifier: 026-126-002, Lot A Section 1 Nanaimo District and of the Bed of the Public Harbour of Nanaimo Plan EPP30518 (the "Parcel"):

This certificate certifies that the Parcel is subject to a revitalization tax exemption equal to the current assessed value of the improvements on the Parcel, minus the assessed value of improvements on the Parcel immediately before _____, multiplied by the municipal rate of tax in effect for Class 06 – Business/Other, for each of the taxation years 20__ to 20__ inclusive.

The Tax Exemption is provided under the following conditions:

1. The Owner does not breach any term, condition or provision of, and performs all obligations set out in, the Agreement and the Bylaw;
2. The Owner has not sold all or any portion of his or her equitable or legal fee simple interest in the Parcel without the transferee taking an assignment of the Agreement, and agreeing to be bound by it;
3. The Owner, or a successor in title to the Owner, has not allowed the property taxes for the Parcel to go into arrears or to become delinquent;
4. The Exempt Use (as defined in the Agreement) of the Project is not discontinued;
5. The Agreement is not otherwise terminated.

If any of these conditions are not met then the Council of the City of Nanaimo may cancel this Revitalization Tax Exemption Certificate. If such cancellation occurs, the Owner of the Parcel, or a successor in title to the Owner as the case may be, shall remit to the City an amount equal to the value of the exemption received after the date of the cancellation of the certificate.

APPENDIX "C" to Revitalization Tax Exemption Agreement

Development Permit for the Project

See DP000854 approved by Council 2013-OCT-07