

File No.: 04-1000-20-2020-082

February 27, 2020

s.22(1)

Dear s.22(1)

**Re: Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")**

I am responding to your request of February 3, 2020 for:

**Copy of full Internal Audit Summary Report titled Nat Bailey Stadium Review dated June 6, 2019; and any subsequent records, including internal and external communications.**

**<https://vancouver.ca/files/cov/nat-bailey-stadium-review-2019.pdf>**

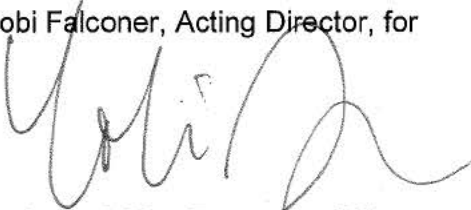
All responsive records are attached.

Under section 52 of the Act, and within 30 business days of receipt of this letter, you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your FOI request by writing to: Office of the Information & Privacy Commissioner, [info@oipc.bc.ca](mailto:info@oipc.bc.ca) or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number (#04-1000-20-2020-082); 2) a copy of this letter; 3) a copy of your original request; and 4) detailed reasons why you are seeking the review.

Yours truly,

Cobi Falconer, Acting Director, for



**Barbara J. Van Fraassen, BA**  
**Director, Access to Information & Privacy**

[Barbara.vanfraassen@vancouver.ca](mailto:Barbara.vanfraassen@vancouver.ca)  
453 W. 12th Avenue Vancouver BC V5Y 1V4

\*If you have any questions, please email us at [foi@vancouver.ca](mailto:foi@vancouver.ca) and we will respond to you as soon as possible. Or you can call the FOI Case Manager at 604.871.6584.

Encl.

:ma



**CITY OF VANCOUVER  
INTERNAL AUDIT REPORT  
Nat Bailey Stadium Review**

**Distribution:**

Audit Committee	Malcolm Bromley – General Manager, Parks & Recreation
KPMG	Nick Kassam – General Manager, Real Estate & Facilities Management
	Danica Djurkovic – Director, Facilities Planning & Development
	Melanie Kerr – Director, Financial Services
	Kelly Oehlschlager – Assistant Director – Corporate, Legal Services
	Sev Araujo – Manager, Commercial Operations
	Harry Khella – Senior Associate, Strategic Business Advisory

**EXECUTIVE SUMMARY**

June 6, 2019

The Nat Bailey Stadium Lease Review was initiated to determine the extent of compliance with the terms of the lease agreement. The objective of the audit was to provide supporting information for the lease negotiations underway as the agreement enters its third five-year term. The 25-year agreement in place stipulates that fair market rent be determined and agreed to for the third term, which commenced in May 1, 2017.

The areas of non-compliance fall primarily within the following categories:

- Maintenance and Repairs (Lease Section 6.2);
- Property Tax (Lease Section 3.1-3.3);
- Financial Reporting (Lease Section 2.8);
- Insurance (Lease Section 10.1-10.2); and
- Notice of Renewal/Renewal Rent Determination (Lease Section 17.1).

Given the above areas of non-compliance, we recommend that the deficiencies be addressed and that any resulting financial obligations be taken into consideration in negotiating the fair market rent to be applied for the third lease term.

The more significant findings and recommendations are:

**D.1 Establish and Assign Responsibilities for a Working Governance Structure, Continuity and Oversight**

Lease management processes should be strengthened to ensure that lease compliance is maintained and sufficient oversight is in place for the remaining 13 years of the lease.

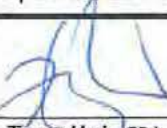
**D.2 Address Capital Maintenance and Improvements Required**

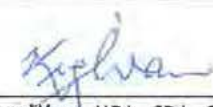
The Tenant has, for many years, failed to comply with its maintenance and repair obligations. Some are safety related and some are critical to operational efficiency of the facility. These deficiencies should be addressed now in priority to bring the Tenant into compliance with the lease terms.

**D.3 Outstanding Payment of In Lieu of Property Tax**

The exact amount owing has yet to be determined as the property parcel is split between Nat Bailey Stadium and the Vancouver Racquet Club, and the percentage allocation for each has yet to be determined. Park Board should consult with Legal Services and determine if the outstanding payments assigned to Nat Bailey Stadium for 2007-2011 should be collected.

Findings and recommendations have been discussed with appropriate management and responses incorporated in this report.

  
Tony Hui, CPA, CA, CRMA  
Chief of Internal Audit

  
King Wan, MBA, CPA, CMA, CIA, CRMA  
Manager, Internal Audit Project



## A. BACKGROUND

The initial Nat Bailey 25-year term lease between the Vancouver Park Board and the Vancouver Professional Baseball Club was signed in 2007 and is renewable by the Tenant every five years. This lease was amended in 2012 (second term) and it came up for the third renewal in 2017. By the end of 2018 the renegotiation was still in progress.

According to the lease the Landlord and the Tenant must agree on a new rent amount for the Third Renewal Term in accordance with the formula set in the lease. This amount has not yet been finalized and agreed upon. In the meantime, the Vancouver Professional Baseball Club has submitted a development permit application to expand its operations at the leased site.

It is recommended that the City should not sign off on Owner's Undertaking and facilitate permit issuance unless and until:

- the third Renewal Rent is successfully negotiated and agreed upon and paid in full;
- all outstanding maintenance repair items required to be completed by the Tenant at its sole cost have been completed by the Tenant to the City's/Park Board's satisfaction;
- all required audited and unaudited statements have been provided by the Tenant as agreed with Tenant, namely unaudited for all of First Term and Second Term and audited for prior two years; and
- the City/Park Board and Tenant have agreed on the financial and other terms associated with the capital upgrade and expansion requested by the Tenant and a suitable modification of Lease has been executed and agreed upon setting out the terms of same.

## B. SCOPE

The following areas were assessed as to the Tenant's compliance with the lease terms, as defined by Nat Bailey Stadium Lease Amendment #1, Amended and Restated as of November 1, 2012. The review covered the years 2007 (beginning of lease's first term) to 2018.

- Audited and unaudited financial statements submitted by the Tenant;
- Revenue reporting, rent calculations, and associated payments submitted by the Tenant;
- Review of payments relating to capital improvements undertaken; and
- The Tenant's compliance with other lease terms including pay in lieu property tax, insurance, and notice of renewal.

Our work included interviews and discussions with key stakeholders in Park Board, Finance, and Legal Services. Documentation reviewed includes the lease and amendments with the Vancouver Professional Baseball LLP, as well as other departmental records and correspondence. Revenue reports and rent payments submitted by the Tenant were also reviewed and recalculated.

The audit is not designed to detect fraud. Accordingly there should be no such reliance.

## C. CONCLUSION

Given the non-compliance issues noted, we recommend that the deficiencies be addressed and that any resulting financial obligations be taken into consideration in negotiating the fair market rent to be applied for the third lease term.

Additionally, lease management processes should be strengthened to ensure that lease compliance is maintained and sufficient oversight is in place for the remaining years of the lease term.

## D. AUDIT ISSUES, RECOMMENDATIONS AND MANAGEMENT RESPONSES

### D.1 Establish and Assign Responsibilities for a Working Governance Structure, Continuity and Oversight

Overall management of the Nat Bailey Stadium lease renewal lacked a working governance structure, continuity and oversight. The lease terms have not been, in a material extent, monitored, enforced or followed-up. Changes in staff over time left the above noted obligations of the Tenant in default with no follow-up or enforcement plan in place.

At the request of the former Deputy General Manager, Park Board, the Vancouver Services Review (VSR) conducted a 'Park Board: Lease Agreements Review' in April 2015 which aimed to review the way lease and other contracts were managed, administered and documented at the Park Board. Several recommendations were made, including clarifying and confirming the roles of Park Board staff in lease administration. That model should be revisited and used as a starting point to manage the Nat Bailey Stadium Lease. The recommendations arising from the VSR review would be appropriate to use to define and assign staff from different departments their roles and responsibilities for this lease and other Park Board leases and contracts on an ongoing basis.

#### Recommendation:

**D.1.1 The Park Board General Manager, in collaboration with BPPS, Finance, REFM, and Legal Services should confirm monitoring roles and responsibilities for all stakeholders in this lease agreement and all other Park Board leases and contracts. This should include assigning responsibility for the Nat Bailey for verifying ongoing compliance with lease terms and be completed by July 31, 2019.**

#### **Management Response:**

*Please check one:*

☒ Agree with the findings

☐ Disagree with the findings

*Please check one:*

☒ Agree with the recommendations

☐ Disagree with the recommendations

#### **Management Action Plan:**

Agree with the findings and the recommendation. While we can implement something by July 31, 2019 for this specific relationship and agreement, this is something that needs to be implemented for all 500 relationships and 1,250 agreements but Commercial Operations currently does not have the capacity or the resources to do this; it has been identified as a gap and is currently being addressed by the REFM/Park Board review of responsibilities/processes.

### D.2 Address Maintenance and Repair Deficiencies

**Lease requirement:**

Section	Description
6.2	<b>Maintenance and Repairs – Tenant’s Obligations</b>
	<p>Stadium</p> <p>Subject only to Article 7 – <i>Alterations, Capital Contributions and Ownership/Removal</i>, Article 11 – <i>Damage and Destruction</i>, and paragraph (e) – <i>Limitation on Tenant’s Repair Responsibilities</i> below, the Tenant will, at the Tenant’s sole expense, at all times during the Term, continuously, actively and diligently keep, operate and maintain, as would a careful and prudent owner, in a safe, clean, and good working order, condition and repair, and promptly make, using first quality new materials, at the Tenant’s expense, all needed Alterations of, to, or in connection with, in the whole and in each and every part of the Stadium and Field (both interior and exterior) including, by way of example only and without limitation, the following:</p> <p>All load-bearing and structural components,</p> <p>The roof structure and roof membrane,</p> <p>Structural defects in the Stadium or Field,</p> <p>Defects in the roof structure or membrane,</p> <p>Repairs, alterations, upgrades, replacements or additions required to the structural, load-bearing, roof, electrical, plumbing, mechanical, or any other components of the Stadium or Field which are required by any governmental authority or the National Association,</p> <p>Spectator risers and seating,</p> <p>Field drainage, irrigation, aeration, compaction, seeding, or plantings,</p> <p>All entrances, glass, walls, ceilings, floors, thresholds, exterior and interior windows and window frames, doors and door frames, signs (interior and exterior), partitions, hardware, locks and mouldings,</p> <p>All fixtures (including Tenant’s Baseball Equipment), improvements (including Tenant’s Work), machinery, installations, equipment, systems, services and facilities located on, in, under, above or which serve the Stadium and Field including, without limitation, wiring, piping, lighting and plumbing fixtures, operating equipment,</p> <p>And, at Tenant’s expense, repaint, redecorate and renovate the Stadium and Field in accordance with Article 7 – <i>Alterations, Capital Contributions Ownership/Removal</i>.</p>

**Findings:**

Many of the maintenance and repair items that the Tenant is responsible for have not been completed. The most recent assessment shows that for the next five years, approximately \$ 3.3M (in 2019 dollars) of repair work is required, with \$ 2 M to be completed in 2019.

There is no evidence of monitoring or verification of any of the required maintenance and repair work over the span of the first two lease terms.

REFM has subsequently completed an evaluation of the facility and has identified the outstanding maintenance items required. Some are safety related and some are critical to operational efficiency of the facility.

**Recommendation:**

**D.2.1 The Park Board General Manager, working in conjunction with REFM, should follow-up with the Tenant on all outstanding maintenance and repair deficiencies so that they are categorized, sorted and scheduled for completion. This working timeline will likely to be factored into the negotiation of the rent for the third term with the Tenant. This should be completed by July 31, 2019.**

**Management Response:**

*Please check one:*

☒ Agree with the findings

☐ Disagree with the findings

*Please check one:*

☒ Agree with the recommendations

☐ Disagree with the recommendations

**Management Action Plan:**

Agree with the findings and the recommendation.

**D.3 Collect Outstanding Property Tax**

**Lease requirement:**

Section	Description
<b>3.1</b>	<b>Payment of Property Taxes Where Lands Are Not Exempt</b>
	<p>Except as otherwise provided in Section 3.2 – <i>Payment of Property Taxes Where Lands are Exempt</i>, the Tenant will in each year during the Term not later than the day immediately preceding the date or dates on which real-property taxes and other charges imposed upon real property within the City of Vancouver become due and payable whether monthly, quarterly, twice-yearly or otherwise, pay and discharge or cause to be paid and discharged all taxes, rates, levies, duties, charges and assessments, including for example and without limitation, school taxes, local improvement rates, utility or municipal services levies, and other charges which now are or will or may be levied, rated, charged or assessed in respect of the:</p> <p>Stadium and Field, all other structures, all machinery, equipment, facilities and other property of any nature whatsoever thereon and therein;  The owner or occupier of same; and  Municipal services provided to or made available to same,</p> <p>(collectively, "Property Taxes") .....</p> <p>Despite the above, the Tenant will be responsible only for payments of Property Taxes as and from the Commencement Date, subject always to pro-rata adjustment pursuant to Section 2.16 – <i>Interest on Overdue Rent</i>.</p>
<b>3.3</b>	<b>Delinquent Taxes</b>
	<p>If the Tenant fails to pay the amount owing under Section 3.1 – <i>Payment of Property Taxes Where Lands Are Not Exempt</i> when due, the Tenant will pay the penalty and/or interest on such overdue amounts imposed by law. However, the Landlord may but is not obliged to pay the arrears, in which case the Tenant will be liable for interest and/or penalties prescribed by law up to the point in time the Landlord makes payment, and for any period of time after that the Tenant will be liable to pay interest at the rate and in the manner provided in Section 2.16 – <i>Interest on Overdue Rent</i>.</p> <p>If the Tenant fails to pay the sum owing under Section 3.2 – <i>Payment of Property</i></p>

	<i>Taxes Where Lands Are Not Exempt</i> when due, the Tenant will be liable to pay interest at the rate and in the manner provided in Section 2.16 – <i>Interest on Overdue Rent</i> .
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### Findings:

There is no evidence that the payments in lieu of property tax were paid by the Tenant during the first five years as required by the lease. The Tenant was, for some reason, exempted from such payment for the next five years 2012-2017 (the second term).

The exact amount owing has yet to be determined as the property parcel is split between Nat Bailey Stadium and the Vancouver Racquet Club, and the percentage allocation for each has yet to be determined. No records of this allocation were able to be provided by Park Board staff.

### Recommendation:

**D.3.1 The Manager, Commercial Operations, Park Board should determine the payment in lieu of property tax due for Nat Bailey Stadium. Once complete, Park Board should consult with Legal Services and determine if the outstanding payments assigned to Nat Bailey Stadium for 2007-2011 should be collected. This should be completed by December 31, 2019.**

### Management Response:

*Please check one:*

☒ Agree with the findings

☐ Disagree with the findings

*Please check one:*

☒ Agree with the recommendations

☐ Disagree with the recommendations

### Management Action Plan:

If its determined Payment In Lieu of Taxes (PILT) is applicable for these two tenants, agree with the findings but not the recommendation in its entirety. Historically the Park Board, with its commercial tenants has negotiated the area which PILT is to be applicable and then applies the approved Council Tax Mill Rate. The agreement does not outline this type of formula and greater discussions are required between Legal and Finance and would form part of current discussions and negotiations.

### D.4 Ensure Tenant Provides Audited Financial Statements

#### Lease requirement:

Section	Description
2.8 (c)	<p><b>(c) Full Audited Financial Statements Prior to Expiry of Renewal Term</b></p> <p>The Tenant will, at the Tenant's expense, deliver to the Landlord no later than 6 months prior to the expiry of each Renewal Term (and in the event of sooner expiry or cancellation of the Lease within 60 days of such sooner expiry or cancellation):</p> <p>(i) Complete financial statements of the Tenant duly audited by an Accountant for all preceding Baseball Years, including a balance sheet, a statement of profit and loss and a statement of changes in financial position, and all notes made pertaining to such statement, and</p>



	(ii) A copy of all procedural audits, if any, conducted by an Accountant of the Tenant's operating and administrative procedures for each such Baseball Years.
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### Findings:

Audited revenue statements were not submitted on a timely basis as required by the lease. Financial reports provided consisted solely of Gross Revenue statements, supporting the amount of the rent paid by the Tenant.

Audited financial statements required by the lease were never submitted. There was no evidence of follow-up action taken by Park Board staff to request the audited financial statements. However, through the course of this audit and upon request from senior management, the Tenant has since provided financial statements that were reviewed by an external auditor. While a review performed by an external accounting firm provides some assurance, it is a lower level of assurance than a full audit, which is the requirement under the lease.

A letter has been sent by the City Manager to the Tenant requesting the most current two years of "audited financial statements" for the Vancouver Professional Baseball LLP in accordance with the lease term. The Tenant has since replied that -they are working to try to accommodate our request for two years of audited statements.

### Recommendation:

**D.4.1 The Manager, Commercial Operations at the Park Board and Financial Services, should ensure that full audited financial statements, as well as audited revenue statements required for the percentage rent calculation under the lease, are provided by the Tenant starting immediately with the next ensuing deadline under the lease.**

### Management Response:

*Please check one:*

☒ Agree with the findings

☐ Disagree with the findings

*Please check one:*

☒ Agree with the recommendations

☐ Disagree with the recommendations

*Management Action Plan:*

Agree with the findings and the recommendation.

### D.5 Ensure Insurance Policy Complies to Lease and Documentation is retained

#### Lease requirement:

Section	Description
10.2	<b>Tenant's Insurance Program – Administrative Requirements</b>
	<p><b>(a) Insurance Companies – Must be Rated</b></p> <p>All policies must be written with companies licensed to do business in British Columbia with a financial rating of VIII or better and a policy holder's rating of A- or better in the latest edition of <i>Best Rating Guide</i> on Property and Casualty Insurance Companies.</p>

	<p><b>(b) Tenant to Pay Premium</b></p> <p>The Tenant will pay all premiums and deductible costs for the insurance required to be effected and maintained by and under this Lease, provided always that under no circumstances does the payment of such premiums give the Tenant any interest in the proceeds of such insurance or any control over such policies as they relate to the Landlord's interests (except as expressly set out in Section 1.3 – <i>Landlord/Tenant's Option to Terminate</i>).</p> <p><b>(c) Tenant to Provide Proper Disclosure</b></p> <p>The Tenant will properly disclose all risks in each insurance application, ensure that it does not violate or void any policy or otherwise comply at all times with the requirements of insurance and underwriters.</p>
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### Findings:

Certificates of insurance were not on file initially with either Park Board or Risk Management. They were subsequently provided upon request by senior management, through the course of this audit.

The City's Insurance department has since reviewed the insurance documentation and has noted that aspects of the Insurance policy do not fully comply with the lease requirements.

### Recommendation:

**D.5.1 The Manager, Commercial Operations, Park Board should ensure that insurance documentation is obtained annually from the Tenant and retained on file, either with Park Board staff or the City's Insurance department. Additionally, the non-compliance issues noted by the Insurance department should be discussed with the Tenant and rectified going forward. This should be completed immediately as lack of proper insurance is a material financial risk to the City and Park Board.**

### Management Response:

*Please check one:*

☒ Agree with the findings

☐ Disagree with the findings

*Please check one:*

☒ Agree with the recommendations

☐ Disagree with the recommendations

### Management Action Plan:

Agree with the findings and the recommendation. While we can implement something by July 31, 2019 for this specific relationship and agreement, this is something that needs to be implemented for all 500 relationships and 1,250 agreements but Commercial Operations currently do not have the capacity or the resources to do this; it has been identified as a gap and is currently being addressed by the REFM/Park Board review of responsibilities/processes.

### D.6 No Timely Receipt of Notice to Renew

Section	Description
17.1	<b>Option to Renew</b>
	If the Tenant has duly and regularly paid all Minimum Rent, Percentage Rent and Additional Rent and performed all of the other material obligations of the Tenant under this Lease during the Term, the Tenant will, at its option, have the right to

	<p>renew this lease upon its expiry for the following additional renewal terms of 5 years each, commencing on the day following the expiry of the Term, which option must be exercised by notice in writing to the Landlord at least 12 months prior to the expiry of the Term:</p> <p>(a) May 1, 2012 – April 30, 2017 (the “Second Term”),  (b) May 1, 2017 – April 30, 2022 (the “Third Term”),  (c) May 1, 2022 – April 30, 2027 (the “Fourth Term”), and  (d) May 1, 2027 – April 30, 2032 (the “Fifth Term”),</p> <p>(collectively, the “Renewal Terms” and individually a “Renewal Term”).</p>
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### **Findings:**

There was no timely receipt of notice to renew in accordance with the lease term. The third renewal period should have started with a notice in writing to the Landlord from the Tenant 12 months prior to May 1, 2017. That would have been May 1, 2016. The tenant sent Notice to Renew on or about October 31, 2016 and the renewal discussions commenced in December 2016.

### **Recommendation:**

**D.6.1 The Manager, Commercial Operations, Park Board should ensure that the Tenant is cognition of the renewal timeline and the requirement of notice in writing for future renewals in accordance with, and at least 12 month to the expiry date of the current lease period.**

### **Management Response:**

*Please check one:*

☒ Agree with the findings

☐ Disagree with the findings

*Please check one:*

☒ Agree with the recommendations

☐ Disagree with the recommendations

### **Management Action Plan:**

Agree with findings and recommendation

The responsibility to provide proper notice is clearly outlined in the Agreement and it is up to the Tenant to act on its obligation and tenant will be reminded of their obligation.