
City Council

Motion without Notice

MM49.20	ACTION			Ward: 20
---------	--------	--	--	----------

Amendment of Reciprocal Agreement between City and Crown - by Councillor Vaughan, seconded by Councillor McConnell

** This Motion has been deemed urgent by the Chair. Council has added this Motion to the agenda for debate.*

Recommendations

Councillor Vaughan, seconded by Councillor McConnell, recommends that:

1. City Council authorize that the reciprocal agreement dated December 1997 (the "Reciprocal Agreement") between the City and Her Majesty the Queen in Right of Canada (the "Crown") be amended pursuant to an amending agreement (the "Amending Agreement"), terms of which are further set out in these Recommendations.
2. City Council authorize the City to enter into the Amending Agreement on terms that in substance provide as follows:
 - a. if the ownership of the Crown's lands at 225 Queens Quay West, designated as Part 2 on Plan 66R-17563 (the "Underground Land") is transferred to Harbourfront Corporation (1990) ("Harbourfront"), Harbourfront agrees that it shall not commence any proposed work for which the Letter of Credit (as defined the Reciprocal Agreement) in favour of the City is required, unless it first delivers to the City either: (1) the said Letter of Credit; or (2) alternate security and other assurances acceptable in form and content to the City's Chief Corporate Officer, in his/her discretion ("Alternate Security") in the place of the Letter of Credit; and
 - b. in effecting a sale, transfer or disposition of the Underground Land from the Crown to Harbourfront, neither the Crown nor Harbourfront shall be obligated under the "Assumption" provision of the Reciprocal Agreement to deliver a Letter of Credit as would otherwise be required under the Reciprocal Agreement.
3. City Council authorize the Chief Corporate Officer to determine and approve from time to time the acceptability of any Alternative Security proposed by Harbourfront under the terms of the Reciprocal Agreement as amended by the Amending Agreement.

4. City Council authorize the City to include in the Amending Agreement such other terms as the Chief Corporate Officer may consider necessary or incidental to the purposes of these Recommendations.
5. City Council authorize the City to consent to the proposed assumption by Harbourfront and assignment by the Crown to Harbourfront of the Reciprocal Agreement upon and subject to the terms of the Reciprocal Agreement, as amended by the Amending Agreement.
6. City Council severally authorize the Chief Corporate Officer and the Director of Real Estate Services, to execute on behalf of the City, the Amending Agreement and any assignment and assumption agreement contemplated in the Reciprocal Agreement and incidental to the sale of the Underground Land to Harbourfront.

Summary

The purpose of this Motion is to request Council to authorize the City to enter into an agreement to amend an existing agreement (the "Reciprocal Agreement") between the City and Her Majesty the Queen in Right of Canada (the "Crown"). The Reciprocal Agreement is dated December 1997 and provides for mutual benefits and obligations of the parties relating to the management, operations and development of property known as "YQ3" (being a portion of the lands at 225 Queens Quay West).

The City and the Crown own strata interests in YQ3. The Crown, owns the subsurface strata designated as Part 2 on Plan 66R-17563 (the "Underground Land") and the City owns the strata above the Underground Land (the "Surface Land"). Currently, the Surface Land is leased by the City to Harbourfront Corporation (1990) ("Harbourfront") for operation of a parking lot, subject to the City's reserved right to develop the Surface Land in future, as a park. The Underground Land is currently undeveloped.

Under the terms of the Reciprocal Agreement, if the Crown sells the Underground Land, the Crown has the right to transfer to the proposed purchaser, all of the Crown's benefits under the Reciprocal Agreement provided that several pre-conditions are met. These include requirements that the Crown deliver: (1) an agreement from the purchaser to be bound by all obligations of the Crown under the Reciprocal Agreement and other agreements relating to YQ3; (2) proof that the purchaser has adequate insurance; and (3) a letter of credit (the "Letter of Credit") from the purchaser securing the risks to the City's Surface Land that might arise in the event that the purchaser undertakes any construction on the Underground Land.

The Crown has notified the City of its intent to sell the Underground Land to Harbourfront. Harbourfront has stated that following the ownership transfer from the Crown, it intends to construct the underground parking facility contemplated in the Reciprocal Agreement (the "Parking Project"). Waterfront Toronto is the proponent for the Parking Project, providing the majority of funding and assuming the responsibility for construction. Harbourfront is responsible for securing the remaining funding and is the client for Parking Project.

Harbourfront advises it has secured a funding agreement for the Parking Project through the Government of Canada's Infrastructure Stimulus Fund, subject to conditions including project completion by March of 2011.

The Crown is in the process of satisfying Reciprocal Agreement's pre-conditions for sale of the Underground Land to Harbourfront. In this process, it has become evident that the requirement for delivery of the Letter of Credit cannot be met. As to the reasons that Harbourfront cannot deliver the Letter of Credit, Harbourfront has stated as follows:

As Harbourfront Corporation (1990) is a non-profit corporation and a registered Canadian charitable organization, it does not have the capital resources to support a letter of credit. Harbourfront Corporation (1990) receives substantial funding from both the federal Crown and City of Toronto. In the letters patent for Harbourfront Corporation (1990) there is a special provision that states "the borrowing power of the Corporation pursuant to any by-law passed and confirmed in accordance with Section 59 of the Corporations Act shall be limited to borrowing money for current operating expenses." In the opinion of the Chief Executive Officer of Harbourfront Corporation (1990) a letter of credit is an encumbrance upon the corporation and is a form of borrowing and therefore contravenes Section 7.3 of the Corporation's letters patent.

The Reciprocal Agreement does not give discretion to the City to waive the Letter of Credit or to accept alternate forms of security in place of the Letter of Credit. In order to enable the possibility of the sale from the Crown to Harbourfront, Council's authority to amend the Reciprocal Agreement is necessary.

(Submitted to City Council on May 11 and 12, 2010 as MM49.20)