Sale of a portion of the City’s Residual Interest in 259 Victoria Street

Date: March 3, 2008
To: City Council
From: Chief Corporate Officer
Wards: 27 – Toronto Centre-Rosedale
Reason for Confidential Information: This matter relates to the security of the property of the municipality
Reference Number: P:\2008\Internal Services\F&re\Cce080023F&re – (AFS 7201)

SUMMARY

The purpose of this report is to authorize the sale of a portion of the City’s residual interest in a part of 259 Victoria Street to the current tenant of the City’s interest and the owner of the building at 259 Victoria Street, Rogers Communications Inc.

The terms for completing the transaction, as set out herein, are considered to be fair, reasonable and reflective of market value.

RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. The City enter into an Agreement of Purchase & Sale with Rogers Communications Inc., the owner of 259 Victoria Street for the sale of the City’s residual interest in that part of 259 Victoria Street, being part of Lot 69, Part of Dundas Street East and Part of Victoria Street, Plan 22A shown as Parts 3, 10 and 11 on Reference Plan 64R-16753 (the “Property”) in the amount and on the terms and conditions as defined in the Confidential Attachment 1.
2. Authority be granted to direct a portion of the proceeds of closing to fund the outstanding expenses related to the Property and the completion of the transaction.

3. The City Solicitor be authorized to complete the transaction on behalf of the City, including making payment of any necessary expenses, amending the closing date and the due diligence or other dates to such earlier or later date(s), and amending and/or waiving terms and conditions in favour of the City, all such terms and conditions as she may from time to time consider reasonable.

4. Council authorize the public release of the confidential information in Attachment 1, if Council approves the transaction.

Financial Impact
The financial impact of this report is contained in Attachment 1 of this report.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

DECISION HISTORY
The Chief Corporate Officer declared the Property surplus on February, 26, 2008 by Delegated Approval Form No. 2008-045 with the intended manner of disposal to be by way of inviting an offer to purchase the Property subject to the existing lease from the owner of 259 Victoria Street, Rogers Communications Inc. (“Rogers”).

ISSUE BACKGROUND
The Property is comprised of air rights primarily located above a portion of the building at 259 Victoria Street. The Property was not acquired through expropriation proceedings. In 1999, as part of the Yonge/Dundas Redevelopment Project, the City authorized a transaction involving the conveyance of a stratified interest in 259 Victoria Street to Penex Dundas Square Ltd. and a lease of the Property for a term of fifty (50) years less one day to house an advertising tower which was to be built by the tenant. Penex Dundas Square Ltd. recently sold 259 Victoria Street to Rogers and as part of that transaction, with the City’s consent, assigned the leasehold interest in the Property to Rogers.

Rogers intends to renovate the building at 259 Victoria Street to house Omni, City TV and the Fan 590, all Rogers affiliated companies. As a part of the renovations, Rogers intends to redesign the media tower. It is urgent that Rogers begin construction of their media centre by spring of 2008 in order to relocate staff from their other locations to 259 Victoria Street. City staff has been approached by a representative acting on behalf of Rogers to negotiate a sale of the Property in order to allow Rogers to complete construction of their media centre without the constraints of the lease.
COMMENTS

Negotiations with a representative of Rogers have resulted in a Proposal for Purchase from Rogers substantially on the terms and conditions outlined in the attached Appendix “A” and are considered to be fair, reasonable and reflective of market value.

The City will not convey the portions of the Property (i.e. air space) that were previously leased to Rogers but extend over City public highways, provided that the media tower and any replacements or modifications will be allowed to encroach over the public highway for the life of the tower. As a result, a new description of the Property and reference plan will be prepared at Rogers’ expense, and on closing the City will receive a surrender of the lease with respect to the air space being retained by the City. Additional details of the terms and conditions of sale are set out in Appendix “A”.

Further details of the Property are:

<table>
<thead>
<tr>
<th>Assessment Roll No:</th>
<th>190406624001001</th>
</tr>
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<tbody>
<tr>
<td>Other Information:</td>
<td>Leasehold houses a media tower currently consisting of 1 digital signboard and 1 static signboard</td>
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As of the writing of this report, not all the steps necessary to comply with the City’s real estate disposal process as set out in Chapter 213 of the City of Toronto Municipal Code have been complied with. The Property has been declared surplus and notice of the proposed sale was given on February 29, 2008. The process will be completed on March 4, 2008.

A Cost Centre has been put in place to charge costs directly related to the sale of City-owned properties, and includes such items as commission, surveying and registration costs. A recommendation is included in this report to direct a portion of the sale proceeds to fund the outstanding expenses related to the Property.
The terms for completing the transaction, as set out herein, are considered to be fair, reasonable and reflective of market value.

**CONTACT**

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**SIGNATURE**

_______________________________  
Bruce Bowes, P.Eng.  
Chief Corporate Officer

**ATTACHMENTS**

Attachment 1 – Confidential Information  
Appendix “A” – Terms and Conditions  
Appendix “B” – Site Map  
Appendix “C” – Reference Plan
Appendix “B” – Location Map of 259 Victoria Street
Sale of a portion of the City’s Residual Interest in 259 Victoria Street

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CONFIDENTIAL RECOMMENDATIONS

The Chief Corporate Officer recommends that:

1. The City enter into an Agreement of Purchase & Sale with Rogers Communications Inc., the owner of 259 Victoria Street for the sale of the City’s residual interest in that part of 259 Victoria Street, being part of Lot 69, Part of Dundas Street East and Part of Victoria Street, Plan 22A shown as Parts 3, 10 and 11 on Reference Plan 64R-16753 (the “Property”) in the amount of $2,750,000, substantially on the terms and conditions outlined in Appendix “A” to this Attachment 1 of this report.

2. Council authorize the public release of the confidential information in Attachment 1, if Council approves the transaction.

Financial Impact
Revenue in the amount of $2,750,000 plus GST if applicable less closing costs is anticipated.

CONFIDENTIAL INFORMATION
Negotiations between the City and Rogers have been completed and agreement has been reached that the value of the Property is $2,750,000. The City will not convey the portions of the Property (i.e. air space) that were previously leased to Rogers but extend over City public highways, provided that the media tower and any replacements or modifications will be allowed to encroach over the public highway for the life of the tower. As a result, a new description of the Property and reference plan will be prepared at Rogers’ expense, and on closing the City will receive a surrender of the lease with respect to the air space being retained by the City. Additional details of the terms and conditions of sale are set out in Appendix “A” and are considered to be fair, reasonable and reflective of market value.
Appendix “A”
Terms and Conditions of Agreement of Purchase and Sale

Subject Property: City’s residual interest in that part of 259 Victoria Street currently leased to Purchaser excluding the retained areas

Legal Description: Part of Lot 69, Part of Dundas Street East and Part of Victoria Street, Plan 22A shown as Parts 3, 10 and 11 on Reference Plan 64R-16753, excluding the retained areas (the “Property”)

Purchaser: Rogers Communications Inc. (“Purchaser”)

Recommended Sale Price: $2,750,000.00

Balance: Cash or certified cheque on closing, no adjustments

Closing Date: April 2, 2008

Due Diligence Period: none

“As Is” Condition: Purchaser shall accept the Property in “as is” condition and, on closing, shall execute and deliver a release in favour of the City, in a form satisfactory to the City Solicitor, in respect of all loss, costs, damages, liability or actions relating to the environmental condition of the Property.

Existing Lease: The Property is subject to an existing lease between the City and Rogers. Rogers agrees to accept title to the Property subject to the Lease and to deliver to the City, on closing, a surrender of the Lease as it pertains to the Retained Areas

Conditions:

1. The Vendor delivering good and marketable title to the Property to the Purchaser on Closing, free and clear of all encumbrances (save and except for permitted encumbrances, which shall include the Lease);

2. the Vendor having complied with all of its obligations to be performed pursuant to the Purchase Agreement and all necessary consents having been obtained;

3. the parties having entered into any and all encroachment agreements required in connection
with the media and communications tower on the Property; and

4. the Purchaser having caused a reference plan of survey integrated with the Ontario Co-ordinate System, satisfactory to the City Surveyor, which delineates the boundaries of the Property as one or more separate Parts thereon to be deposited in the appropriate Land Registry Office, at the Purchaser’s sole cost and expense.