



PA2.03

REPORT FOR ACTION

Amending Agreement - Acquisition of New Public Parking Garage: 300 to 308 Queen Street West (Municipal Carpark 262)

Date: January 15, 2019
To: Board of Directors, Toronto Parking Authority
From: Acting President, Toronto Parking Authority
Wards: Ward 10, Spadina-Fort York

SUMMARY

Toronto Parking Authority ("TPA") entered into a conditional Agreement of Purchase and Sale with 2206181 Ontario Inc., Queen Street Retail Inc., 2230017 Ontario Inc., and Sweeney Holdings Inc. (collectively referred to as the "Vendor") dated March 17, 2016 (the "APS"). The APS provided that the Vendor would construct and complete a below-grade municipal parking garage, containing up to 125 parking spaces, to TPA standards and specifications and convey the garage to the City for use as a TPA garage. The garage would form part of a commercial / retail development project to be constructed at 300-308 Queen Street West, Toronto (the "Subject Property").

In June 2016, City Council adopted the recommendations in *Item GM12.18 - Purchase of Stratified Interest in 300 to 308 Queen Street West*, and approved the terms and conditions of the conditional APS.

This report seeks the approval of the Board of Directors of the TPA for TPA to enter into an amending agreement with the Vendor and 2209153 Ontario Inc., in a form satisfactory to the City Solicitor, to correct an error in the name of one of the Vendor entities to the APS, subject to City approval of the amending agreement being obtained through the real estate delegated approval process.

City Real Estate Services staff concurs with the TPA staff recommendation and will prepare and process the necessary delegated authority approval form to seek City approval. Borden Ladner Gervais (TPA outside counsel) and City Legal Services have been consulted in this matter.

RECOMMENDATIONS

The Acting President, Toronto Parking Authority recommends that:

1. The Board of Directors of the Toronto Parking Authority authorize TPA to enter into an agreement amending the APS (the "Amending Agreement") with 2206181 Ontario Inc., Queen Street Retail Inc., 2230017 Ontario Inc., Sweeney Holdings Inc. and 2209153 Ontario Inc., to correct a clerical error that resulted in 2230017 Ontario Inc. being incorrectly named as one of the Vendor entities instead of the correct entity 2209153 Ontario Inc., subject to City approval of the Amending Agreement being obtained through the Real Estate Approval Process, as defined in Toronto Municipal Code Chapter 179, Parking Authority.

FINANCIAL IMPACT

There is no financial impact as the matter being addressed is one of a clerical error.

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

DECISION HISTORY

At its meeting on May 28, 2014 (*TPA Board Minute No.: 14-076*), TPA Board of Directors authorized staff to negotiate an APS with the Vendor as well as retain Borden Ladner Gervais as TPA's legal counsel to assist with the negotiation and preparation of the APS and related documents to complete the closing.

On March 17, 2016, the conditional APS involving the purchase from the Vendor of a strata interest comprised of a below grade parking garage, to be constructed upon the Subject Property, was executed by the parties.

At its meeting on March 22, 2016 (*TPA Board Minute No.: 16-045*), TPA Board of Directors approved the APS between TPA and the Vendor as well as the added expenditure for parking equipment and any other transaction associated costs.

At its meeting on June 7, 8 and 9, 2016, City Council adopted the recommendations in *Item GM12.18 - Purchase of Stratified Interest in 300 to 308 Queen Street West*, and approved the terms and conditions of the conditional APS.

COMMENTS

Due to an inadvertent clerical error, the APS was entered into with 2230017 Ontario Inc. as one of the beneficial owners of the Subject Property. It was recently disclosed to TPA that the error was discovered by the accountant for 2230017 Ontario Inc. and

2209153 Ontario Inc. and that the correct beneficial owner of the Subject Property was at all times 2209153 Ontario Inc., together with Queen Street Retail Inc., and Sweeney Holdings Inc.

According to public records of the Ministry of Government Services obtained on December 22, 2016, Owen Lawson is the sole Director and President of 2230017 Ontario Inc. According to public records of the Ministry of Government Services obtained on December 17, 2018, Owen Lawson is the sole Director and President of 2209153 Ontario Inc.

Amending Agreement - Terms and Conditions

Table 1.0 below summarizes the terms and conditions of the proposed Amending Agreement between TPA and the Vendor, which Amending Agreement remains to be executed between the parties, subject to TPA Board approval and City approval by way of delegated approval authority.

Table 1.0 - Terms and Conditions of the Amending Agreement

1. Amendment to Purchase Agreement

From and after March 17, 2016, any reference in the Purchase Agreement to 2230017 Ontario Inc. is deleted and "2209153 Ontario Inc." is inserted in its place.

2. Miscellaneous

Purchase Agreement Ratified and Time of Essence – Except as hereby expressly amended, the Purchase Agreement is hereby ratified and confirmed by the parties hereto to the effect and with the intent that the Purchase Agreement and this Agreement shall be read and construed as one document. Without limiting the generality of the foregoing, 2209153 Ontario Inc. confirms and ratifies the Purchase Agreement and agrees to be bound by and perform the Vendor obligations to the same extent as if it was an original signing party to the Purchase Agreement in the place and stead of 2230017 Ontario Inc. Time is of the essence hereof and shall remain of the essence of the Purchase Agreement, and no variation of this Agreement shall operate as a waiver of this provision.

Enurement – This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

Further Documentation – The parties hereto shall execute and deliver such further documents and assurances as may be reasonably required from time to time by any party hereto to give full effect to the intent and meaning of this Agreement.

The project is nearing completion and the turnover and conveyance of the public parking garage is anticipated to occur in early February 2019. The carpark (Municipal Carpark 262), having a municipal address of 10 Soho Street, will be delivered to design standards and specifications that meet TPA's requirements and contain a total of 116 parking spaces (to be confirmed).

CONTACT

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SIGNATURE

Robin Oliphant
Acting President, Toronto Parking Authority

ATTACHMENTS

Appendix 'A' - Site Location Map

APPENDIX 'A'

SITE LOCATION MAP

