REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

Additional Project Costs - Purchase of Stratified Interest in 9 Wellesley Street West (Municipal Car Park 304)

Date: May 10, 2021
To: Board of Directors, Toronto Parking Authority
From: President, Toronto Parking Authority
Wards: Ward 13 - Toronto Centre

REASON FOR CONFIDENTIAL ATTACHMENT

The attachment to this report is about a position to be applied to negotiations being carried out by Toronto Parking Authority (TPA).

SUMMARY

Toronto Parking Authority (TPA) entered into an Agreement of Purchase and Sale (APS) with Lanterra Developments (Bay Wellesley) Limited (referred to as the Vendor) for the acquisition of a municipal parking facility containing 134 parking spaces at 9 Wellesley Street West (the Property, Car Park 304). The transaction involves the acquisition by the City of a stratified interest in a below-grade portion of the Property within which a municipal parking facility is to be located and form part of a mixed commercial / retail / residential development.

Construction of the development, including the municipal parking facility, is completed and the parking facility was turned over to TPA on May 6, 2021. Operation of the facility is planned to commence on May 10, 2021. TPA has undertaken a comprehensive physical review of the parking garage and has confirmed that the garage has been constructed in accordance with the APS and TPA standards and specifications except where variances to requirements may have otherwise been agreed.

The purpose of this report is to request approval from TPA Board of Directors for additional funding of $135,011, excluding Harmonized Sales Tax (HST), to act as a modest contingency allowance to cover build-out, closing costs, as well as any other unforeseen final closing related expenditures. The additional project costs will result in the total project costs increasing from $7,270,371 to an amount not exceeding $7,405,382 excluding HST.

TPA has updated its financial analysis of the acquisition to include a conservative estimate of the additional costs and is satisfied that TPA's Internal Rate of Return (IRR) on the acquisition will continue to exceed its benchmark.

RECOMMENDATIONS

The President, Toronto Parking Authority recommends that:

1. The Board of Directors of Toronto Parking Authority authorize the President, Toronto Parking Authority to make additional expenditures of not more than $135,011 excluding Harmonized Sales Tax to cover additional construction build out costs, closing costs, and any other unforeseen final closing related costs related to 9 Wellesley Street West for a total acquisition cost of up to $7,405,382 excluding Harmonized Sales Tax.

2. The Board of Directors, Toronto Parking Authority direct that *Confidential Attachment 1* remain confidential in its entirety as it relates to a position to be applied to negotiations being carried out by Toronto Parking Authority.

FINANCIAL IMPACT

TPA has reviewed the impact of the additional project costs and has completed an updated financial analysis as detailed within Confidential Attachment 1.

Sufficient funding is available in TPA's approved 2021 Capital Budget to cover the increased project costs being requested.

DECISION HISTORY

At its meeting of September 25, 2013 (Meeting Minute #13-134), TPA Board of Directors authorized staff to negotiate an APS with the Vendor and to retain Fogler, Rubinoff LLP as TPA's Legal Counsel related to the negotiation of the APS and related agreements. Additional information, including the complete staff report, can be found here, appended under Appendix B:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PA14.3

At its meeting of January 19, 2017 (Meeting Minute #17-012), TPA Board of Directors approved the final APS terms and conditions related to the transaction negotiated between TPA and the Vendor including the expenditure for parking equipment as well as transaction-related documentation and expenses. Additional information, including the complete staff report, can be found here, appended under Appendix B:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PA14.3

At its meeting of January 31, 2017, City Council adopted the recommendations in item GM17.12 - Purchase of Stratified Interest in 11 Wellesley Street West (Ward 27), and approved the terms and conditions of the conditional APS.
Additional information can be found here:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.GM17.12

At its meeting of November 25, 2019, TPA Board of Directors approved the recommendations in item PA10.2 – Rate Setting for Off-Street Municipal Parking Facility – Municipal Car Park 304, 11 Wellesley Street West (Ward 13), approving parking rates for Municipal Car Park 304, and directed the President, TPA to implement these rates when the parking facility becomes operational.
Additional information can be found here:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.PA10.2

At its meeting of May 15, 2020, TPA Board of Directors approved the recommendations in item PA14.3 – Additional Project Costs – Purchase of Stratified Interest in 11 Wellesley Street West (Municipal Car park 304) (Ward 13), approving the additional expenditure for the completion of construction build out costs, parking payment equipment, closing costs, and the acquisition of two (2) additional parking spaces.
Additional information can be found here:
http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.PA14.3

COMMENTS

Closing Costs Update

In May 2020, TPA Board of Directors approved additional spending in the amount of $320,371 (excluding HST) to cover the acquisition of two (2) additional parking spaces as well as additional expenditures related to construction build-out, parking equipment and closing related costs totaling $7,270,371.

Given that the turnover and conveyance of the public parking garage had been delayed significantly since last being reported to the Board in May 2020, TPA has carried out a detailed review of the current cost estimate to close the transaction and compared these costs against the spending amounts approved by TPA Board of Directors (refer to Table 1.0).

A modest contingency allowance is being requested to cover build-out, closing costs, and any other unforeseen final closing related expenditures of $135,011. This contingency allowance would result in the total maximum project costs increasing from $7,270,371 to an amount not exceeding $7,405,382 excluding HST.

Table 1.0 - Project Cost Comparison Update (May 2020 versus May 2021)					
Description		**Approved May-2020 Spend**	**Forecast May-2021 Spend**	**Variance**	**Comments**
Number of Stalls		134	134	None	No change
Acquisition of Parking		$6,700,000	$6,700,000	None	No change
Build-Out	*Equipment and Infrastructure*	*$329,896*	*$335,896*	*$6,000*	*Relocation of two (2) Pay-on-Foot stations (i.e. power, conduit, cables and signage as required); and vehicular way finding signage within the garage.*
	Hydro Supply for Electric Vehicle Charging Infrastructure	*None*	*$35,000*	*$35,000*	*Provisional estimate to provide sufficient hydro to allow for the future installation of electric vehicle charging stations*
	Sub-total	$329,896	$370,896	$41,000	
Transaction Closing	*Environmental Studies*	*$10,000*	*None*	*($10,000)*	*Not required.*
	Legal Fees	*$100,000*	*$187,000*	*$87,000*	*Outside legal counsel has submitted a fee estimate that is greater than previous estimates identifying increased costs due to transaction complexities and closing delays. New fee estimate will be reviewed by TPA staff in consultation with Legal Services.*
	Land Transfer Tax (LTT)	*$130,475*	*$132,486*	*$2,011*	*Actual LTT costs higher than anticipated.*
	Further Contingency Allowance	*None*	*$15,000*	*$15,000*	*Estimate to address any other currently unforeseen matters related to final closing.*
	Sub-total	$240,475	$334,486	$94,011	
Total Project Cost (excluding HST)		**$7,270,371**	**$7,405,382**	**$135,011**	**Additional Build-Out, Closing Costs, and Contingency Allowance.**

Construction Build-Out Costs Update

TPA completed a review of its design requirements for the garage and has made modifications and improvements related to vehicular circulation within the garage and the relocation of the two (2) Pay-on-Foot stations. In addition, TPA has identified an opportunity to have the Vendor increase the hydro supply for the parking garage, which will enable the future installation of electric vehicle (EV) charging stations (four (4) to six (6) Level 2 charging stations anticipated).

TPA has estimated the cost to relocate the Pay-on-Foot stations (i.e. supply power, conduit and cabling for camera installations, where required) plus the production of additional signage at $6,000 while a provisional allowance of up to $35,000 is identified for increasing the available hydro supply needed to accommodate the future installation of EV charging infrastructure within the garage.

The Developer is scheduled to complete the required work within the next 90 days.

Legal Fees Update

In May 2020, TPA Board of Directors approved additional legal costs totaling $100,000 (excluding HST) to complete the transaction which was scheduled to close in mid-2020. Throughout 2020, all parties (TPA, the City and the Vendor) worked cooperatively to settle closing documents and address various closing items in anticipation of the turn-over of the parking garage.

In July 2020, the Vendor advised that the APS condition related to the expiry of the construction lien period would not be satisfied as a condition of Closing. Even though the public parking garage had achieved occupancy status in February 2020, the lien period was connected to the remainder of the building which was still being completed.

While the Vendor was agreeable to closing the transaction inside the lien period through issuance of an indemnity, Legal Services advised that the City would not agree to close on the transaction with an encumbrance on title. The parties agreed to postpone Closing until such time as the condition was satisfied using their time to settle the Reciprocal Agreement and various other closing documents.

The Vendor has since confirmed that the lien period has expired with the project registered on April 13, 2021.

As a result of the delays and other complexities related to the transaction closing, TPA's external counsel, Fogler, Rubinoff LLP (Fogler) has advised that their billings and fees will exceed the approved spend of $100,000 and has provided a fee estimate of $187,000 required to close the transaction. The increased legal fees are attributable to the complexity of the transaction closing and impact of the Covid-19 pandemic including:

- Issues related to potential Construction Liens;
- Settling the complex reciprocal easements as between the various constituent elements of the project;
- Protracted negotiations in respect of the Reciprocal Agreement;
- Issues related to the level of completion of the public parking garage and the extent of the deficiencies; and
- Delays and impediments caused by the various Covid-19 related restrictions that were in place from time to time.

TPA is reviewing the fee estimate from Fogler and will work with Legal Services to confirm whether the fee estimate for the remainder of the required work is appropriate. At the current time, however, TPA has assumed that the total estimated expense with respect to this aspect of the total project cost will be $187,000 (excluding HST) rather than $100,000 (excluding HST) and have included this expense in the requested authorization for potential expenditures in the event that the authorization of the amount is needed.

CONTACT

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SIGNATURE

W. Scott Collier, President,
Toronto Parking Authority

ATTACHMENTS

Confidential Attachment 1 - Additional Project Costs - Purchase of Stratified Interest in 9 Wellesley Street West (Municipal Car Park 304)