

Toronto Parking Authority Settlement Proposals with Leased Tenants

Date: April 14, 2022

To: General Government and Licensing Committee

From: Executive Director, Corporate Real Estate Management

Wards: Ward 13 - Toronto Centre

REASON FOR CONFIDENTIAL INFORMATION

This report is about litigation or potential litigation that affects the City or one of its agencies or corporations.

SUMMARY

Corporate Real Estate Management (C.R.E.M.) is seeking Council authority to approve the proposed settlement terms and conditions attached hereto as Confidential Attachments between Toronto Parking Authority and its Lease Tenants located at 20 Charles Street East also known as Municipal Car Park 1.

Under the City-Wide Real Estate model (C.W.R.E), T.P.A.'s lease administration and property management functions will transfer to C.R.E.M. Implementation of the centralized real estate model is in progress; the work to the transfer of T.P.A.'s rental portfolio will commence in the third quarter of 2022.

RECOMMENDATIONS

The Executive Director, Corporate Real Estate Management, recommends that:

1. City Council authorize the Executive Director, Corporate Real Estate Management, or his designate, to execute the proposed settlements between Toronto Parking Authority

and its Leased Tenants located in Municipal Car Park 1 at 20 Charles Street East (the Property) substantially in accordance with the terms and conditions as set out in the attached Confidential Attachments and including such other terms as deemed appropriate by the Executive Director, Corporate Real Estate Management and in a form satisfactory to the City Solicitor.

2. City Council adopt the confidential instructions to staff in Confidential Attachment 1 and 2.

3. City Council direct that the confidential information contained in Confidential Attachment 1 and 2 remain confidential in its entirety, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The financial implications of the proposed settlement are outlined in Confidential Attachment 1 and 2.

DECISION HISTORY

At its meeting on February 18, 2022, Toronto Parking Authority adopted, along with its Board of Directors, P.A.28.12 in which this outlines the proposed settlement with one of the tenants (Tokyo Kitchen Ltd).

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PA28.12>

At its meeting on February 18, 2022, Toronto Parking Authority adopted, along with its Board of Directors, P.A.28.13 in which this outlines the proposed settlement with one of the tenants (Elite Cleaners).

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.PA28.13>

At its meeting on November 9, 2021, City Council adopted EX27.4 which authorizes City-Wide Real Estate centralization and directs that all City Divisions, and the City Agencies and Corporations operate in accordance with the City's centralized Real Estate Service Delivery Model as approved by City Council on May 24, 25, and 26, 2017 in Item 2017.EX25.9. TPAs authorities to approve and enter into licences and leases in relation to areas or facilities under its jurisdiction were limited as the City's interests in lands were now intended to be managed by Corporate Real Estate Management.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.EX27.4>

COMMENTS

This report pertains to two distinct tenancies in which a combination of rental arrears and tenant claims have resulted in the City and respective tenants entering into

negotiated settlements to resolve. The tenancies are with Tokyo Kitchen (Tokyo), and Elite Cleaners (Elite) respectively.

Tokyo Kitchen

In 1996, Toronto Parking Authority (T.P.A.) entered into a five (5) year lease agreement with Tokyo Kitchen, for the use of Unit 1, 20 Charles Street East (the Property) located at T.P.A. Car Park 1. T.P.A. and Tokyo entered into four (4) successive lease extension agreements over the following 15-year period, the last of which began in 2011.

In early 2016, T.P.A. advised Tokyo of the need to vacate the premises given that planned construction for an addition to Car Park 1 would not permit Tokyo to operate during the period of construction. Tokyo subsequently accepted the requirement to vacate under the condition that a new five (5) year lease agreement would be signed at the time of re-occupancy.

The premises was re-occupied by the tenant on December 6, 2017, but due to inadvertence, a new lease agreement was not entered into by both parties at the time. Consequently, Tokyo has occupied the premises without a valid lease agreement since December 6, 2017 and the rent obligations were not monitored for arrears.

On March 29, 2021, T.P.A. issued a demand letter to the Tenant requesting payment of \$400,316.81 (inclusive of H.S.T.) of rent arrears pertaining to the period from December 6, 2017 until March 31, 2021.

Thereafter, negotiations ensued between the Tokyo's solicitor and the T.P.A. regarding the amount owing to the T.P.A., claims made by the Tenant in respect of the interruption of their operation by the construction activities and the need for a valid lease agreement. By email, dated January 12, 2022, Tokyo, through its solicitors, agreed to pay the T.P.A. the sum set out in the Confidential Attachment 1 in full settlement of T.P.A.'s demand for payment.

Elite Cleaners

In 2007, T.P.A. entered into a five (5) year lease agreement with Elite Cleaners (Elite) for Unit 3, located at T.P.A. Car Park 1. This lease was extended for an additional five (5) years in 2012 through a lease extension agreement.

In early 2016, T.P.A. advised Elite of the need to vacate the premises given that planned construction for an addition to Car Park 1 would not permit Elite to operate during the period of construction. Elite subsequently accepted the requirement to vacate under the condition that a new five (5) year lease agreement with an option to renew for an additional five (5) years would be signed at the time of re-occupancy.

The premises was re-occupied by the tenant on December 6, 2017, but due to inadvertence, a new lease agreement was not entered into by both parties at the time. Consequently, Elite has occupied the premises without a valid lease agreement since December 6, 2017 and the rent obligations were not monitored for arrears.

On March 29, 2021, T.P.A. issued a demand letter to Elite requesting payment of \$192,782.92 (inclusive of H.S.T.) of rent arrears pertaining to the period from December 6, 2017 until March 31, 2021.

Thereafter, negotiations ensued between Elite's solicitor and the T.P.A. regarding the amount owing to the T.P.A., claims made by Elite in respect of the interruption of their operation by the construction activities and the need for a valid lease agreement. By email, dated December 17, 2021, Elite, through its solicitors, agreed to pay the T.P.A. the sum set out in the Confidential Attachment 2 in full settlement of T.P.A.'s demand for payment.

The two respective settlement proposals have been reviewed and agreed upon, in principle, by T.P.A. and C.R.E.M. and in consultation with Legal Services Division. T.P.A. has subsequently communicated to Elite and Tokyo that T.P.A., through C.R.E.M., is prepared to recommend to City Council that the outstanding claims be settled as set out herein and in the Confidential Attachments.

Details to each of the settlement terms and amounts being recovered are included within the two confidential attachments.

Implementation of the City-Wide Real Estate Model

T.P.A. has a commercial and residential rental portfolio comprised of 35 units accounting for over 7,000 square metres (m) across 17 properties. The tenancies are varied in use including retail, office, car wash operations and residential. Under the City-Wide Real Estate model (C.W.R.E), T.P.A.'s lease administration and property management functions will transfer to C.R.E.M. Implementation of the centralized real estate model is in progress; the work to the transfer of T.P.A.'s rental portfolio will commence in the third quarter of 2022.

CONTACT

Graham Leah, Director, Property Management Services, Corporate Real Estate Management
(416) 338-0234, graham.leah@toronto.ca

Mark Zwegers, Solicitor, Legal Services, City of Toronto,
416-397-4055, Mark.Zwegers@toronto.ca

Jeffrey Dea, Vice President, Business Development, Toronto Parking Authority,
437-243-6545, Jeffrey.Dea2@toronto.ca

SIGNATURE

Patrick Matozzo
Executive Director, Corporate Real Estate Management

ATTACHMENTS

Confidential Attachment 1 - Confidential Information

Confidential Attachment 2 - Confidential Information