

DELEGATED APPROVAL FORM
DIRECTOR, REAL ESTATE SERVICES
MANAGER, REAL ESTATE SERVICES

TRACKING NO.: 2018-234

Approved pursuant to the Delegated Authority contained in Executive Committee Item EX27.12, as adopted by City Council on October 2, 3 and 4, 2017 or, where applicable, in Executive Committee Item EX28.8, as adopted by City Council on November 7, 8 and 9, 2017.

Prepared By:	Greg Blyskosz	Division:	Toronto Parking Authority
Date Prepared:	July 3, 2018	Phone No.:	416-393-7267

Purpose	To obtain authority to amend certain terms of the purchase and sale transaction between Toronto Parking Authority (the "TPA") and Cresford Capital Corporation and 33 Yorkville Residences Inc. (collectively, "Cresford") involving the sale of City-owned strata lands at Municipal Carpark 15, municipally known as 50 Cumberland Street / 37 Yorkville Avenue, which was completed on December 18, 2015. As part of the transaction the City retained a strata area sufficient to accommodate a minimum 800 parking spaces ("Subject Property") (see <i>Appendix 'A' – Site Location Map</i>).
Property	50 Cumberland Street (also has a convenience address of 37 Yorkville Avenue), described as Lot 16-19 on Plan 355; Part of Private Lane, Plan 355 as closed by By-law EM57946 & By-law EM68522; Part Lot 1 on Plan 46; part of Lot 21, Concession 2, from The Bay; City of Toronto, with the City retaining a strata area sufficient to accommodate a minimum of 800 parking spaces.
Actions	<ol style="list-style-type: none"> Authority be granted to amend the Agreement of Purchase and Sale (as amended and assigned) between Toronto Parking Authority and Cresford Capital Corporation and 33 Yorkville Residences Inc. which was authorized by Item GM11.13 at City of Toronto Council meeting on March 5, 6, and 7, 2012, and DAF No. 2011-304, DAF No. 2015-302, and DAF No. 2017-333, by entering into an amending agreement ("Agreement") with Cresford involving: <ol style="list-style-type: none"> a deferral of the provision of shoring and excavation permits; waiving the requirement for a 100% labour and material bond; and obliging Cresford to pay to TPA the sum of \$250,000.00 per month as compensation for lost income if demolition of the Parking Garage has commenced and Cresford has not obtained the necessary shoring and excavation permits by February 1, 2019. The appropriate City and Toronto Parking Authority Officials be authorized and directed to take the necessary action to give effect thereto.
Financial Impact	<p>If Cresford obtains the necessary shoring and excavation permits from the City by February 1, 2019, there are no financial implications as a result of the amendment to the APS. However, if Cresford does not obtain these permits by February 1, 2019, then from February 1, 2019 until the date that Cresford obtains these permits, the amount of compensation payable by Cresford to TPA for lost income would increase from \$125,000.00 to \$250,000.00 per month until such time as these permits are obtained by Cresford.</p> <p>Funding for this Project (TPA907611 - Redevelopment of Carpark No.15) that includes an 800-space municipal parking garage according to TPA standards and specifications totalling \$7.2 million is included in the Toronto Parking Authority's 2018-2027 Approved Capital Plan for Toronto Parking Authority. The project is anticipated to be fully implemented in 2020. Any changes to the schedule and / or financial impact will be reported through the 2019 Budget Process.</p> <p>The interim Chief Financial Officer has reviewed this report and agrees with the financial impact information.</p>
Comments	<p>Before the start of any demolition of the existing public parking garage, the Agreement of Purchase and Sale ("APS") between Cresford and TPA requires Cresford to have a shoring and excavation permit in place. Cresford wants to initiate demolition and has requested a postponement of the obligation to provide these permits. The demolition work is anticipated to take approximately 6 months to complete, and Cresford can obtain these permits during this time. Cresford has also requested that labour and material bonds ("L&M Bonds") not be provided to the TPA for the project.</p> <p><i>Continued on Page 4</i></p>
Terms	<i>Refer to Page 4</i>

Property Details	Ward:	27 – Toronto Centre-Rosedale
	Assessment Roll No.:	1904-05-2-020-02800
	Approximate Size:	Frontage on Cumberland Street: 67.0 m ± (221.0 ft±) Frontage on Yorkville Avenue: 78.0 m ± (256.0 ft ±)
	Approximate Area:	4,640.0 m ² ± (49,950 ft ² ±) (1.15 ac)
	Other Information:	The City will own a strata sufficient in area to accommodate a minimum of 800 parking spaces

A.	Manager, Real Estate Services has approval authority for:	Director, Real Estate Services has approval authority for:
<p>1. Acquisitions:</p> <p>2. Expropriations:</p> <p>3. Issuance of RFPs/REOs:</p> <p>4. Permanent Highway Closures:</p> <p>5. Transfer of Operational Management to Divisions and Agencies:</p> <p>6. Limiting Distance Agreements:</p> <p>7. Disposals (including Leases of 21 years or more):</p> <p>8. Exchange of land in Green Space System & Parks & Open Space Areas of Official Plan: N/A</p> <p>9. Leases/Licences (City as Landlord/Licensor):</p> <p>10. Leases/Licences (City as Tenant/Licensee):</p> <p>11. Easements (City as Grantor):</p> <p>12. Easements (City as Grantee):</p> <p>13. Revisions to Council Decisions in Real Estate Matters:</p> <p>14. Miscellaneous:</p>	<p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$50,000.</p> <p>Delegated to a more senior position.</p> <p>Delegated to a more senior position.</p> <p>Delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p>Delegated to a more senior position.</p> <p><input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$50,000.</p> <p><input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding three (3) months, including licences for environmental assessments and/or testing, etc.</p> <p>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$50,000.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p>Delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$50,000.</p> <p>Delegated to a more senior position.</p> <p>Delegated to a more senior position.</p>	<p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.</p> <p><input type="checkbox"/> Issuance of RFPs/REOs.</p> <p><input type="checkbox"/> Initiate process & authorize GM, Transportation Services to give notice of proposed by-law.</p> <p>Delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input checked="" type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Exchange of land in Green Space System and Parks and Open Space Areas of Official Plan.</p> <p><input type="checkbox"/> (a) Where total compensation (including options/renewals) does not exceed \$1 Million.</p> <p><input type="checkbox"/> (b) Where compensation is less than market value, for periods not exceeding six (6) months, including licences for environmental assessments and/or testing, etc.</p> <p>Leases pursuant to the Community Space Tenancy Policy delegated to a more senior position.</p> <p><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$1 Million.</p> <p><input type="checkbox"/> (a) Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> (b) When closing roads, easements to pre-existing utilities for nominal consideration.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p><input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and subject to General Condition (u)).</p> <p><input type="checkbox"/> (a) Approvals, Consents, Notices and Assignments under all Leases/Licences</p> <p><input type="checkbox"/> (b) Releases/Discharges</p> <p><input type="checkbox"/> (c) Surrenders/Abandonments</p> <p><input type="checkbox"/> (d) Enforcements/Terminations</p> <p><input type="checkbox"/> (e) Consents/Non-Disturbance Agreements/Acknowledgements/Estoppels/Certificates</p> <p><input type="checkbox"/> (f) Objections/Waivers/Caution</p> <p><input type="checkbox"/> (g) Notices of Lease and Sublease</p> <p><input type="checkbox"/> (h) Consent to regulatory applications by City, as owner</p> <p><input type="checkbox"/> (i) Consent to assignment of Agreement of Purchase/Sale; Direction re Title</p> <p><input type="checkbox"/> (j) Documentation relating to Land Titles applications</p> <p><input type="checkbox"/> (k) Correcting/Quit Claim Transfer/Deeds</p>

B. Director, Real Estate Services and Manager, Real Estate Services each has signing authority on behalf of the City for:

- Documents required to implement matters for which he or she also has delegated approval authority.
- Expropriation Applications and Notices following Council approval of expropriation (Manager, Acquisitions & Expropriations is only Manager with such signing authority).

Director, Real Estate Services also has signing authority on behalf of the City for:

- Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
- Community Space Tenancy Leases approved by delegated authority by Deputy City Manager, Internal Corporal Services and any related documents.

Consultation with Councillor(s)															
Councillor:	Kristyn Wong-Tam					Councillor:									
Contact Name:	Lorraine Hewitt					Contact Name:									
Contacted by:	Phone	X	E-Mail		Memo		Other	Contacted by:	Phone		E-mail		Memo		Other
Comments:						Comments:									
Consultation with Divisions and/or Agencies															
Division:	CreateTO					Division:	Financial Planning								
Contact Name:	Joe Casali					Contact Name:	Maria Djergovic								
Comments:	Director, Strategic Initiatives					Comments:	Concurs with the financial implications								
Legal Division Contact															
Contact Name:	Soo Kim Lee (416-392-1246)														

DAF Tracking No.: 2018-234	Date	Signature
Recommended by: Acting President, Toronto Parking Authority	July 3, 2018	Signed by Andy Koropeski
<input checked="" type="checkbox"/> Recommended by: Manager, Real Estate Services	July 3, 2018	Signed by Nick Simos
<input type="checkbox"/> Approved by: Nick Simos		
<input checked="" type="checkbox"/> Approved by: Director, Real Estate Services	July 6, 2018	For Signed by Josie Scioli

General Conditions ("GC")

- (a) The local Councillor (or local Councillors if the subject property is located on a ward boundary or if the transaction involves an exchange of properties in more than one ward), will be consulted prior to the exercise of delegated Approving Authority by staff for all Acquisitions, Disposals, Land Exchanges and Leases. In the event of a vacancy in the Ward in which the subject property is located, the Mayor's office shall be consulted in the alternative.
- (b) Where approving power has been delegated to staff, the Deputy City Manager, Internal Corporate Services, in consultation with any other applicable Deputy City Manager or the City Manager, may determine that such matter is of such special interest that same should be returned to the relevant Committee and Council for consideration and determination.
- (c) Exercise of delegated authority is subject to all applicable Council policies, statutes or other applicable law.
- (d) Authority to approve financial commitments/expenditures is subject to all amounts being available in an approved budget, or funding being available from third party sources, except for "Strategic Property Acquisitions" as set out in EX44.22 adopted by Council August 25, 26, 27 and 28, 2014, which identifies alternative funding mechanisms subject to additional approval requirements.
- (e) Property interests are to be based on appraised value, and no interest shall be granted at less than market value unless otherwise specifically authorized.
- (f) Authority to approve transactions at less than market value is subject to statutory anti-bonusing provisions.
- (g) Total compensation means the aggregate of all types of payments, including land value, estimated clean-up costs, potential arbitration awards, loss claims, etc., but exclusive of any applicable taxes and registration costs.
- (h) Authority to acquire property is conditional upon provision being made to bring the property into compliance with applicable MOE or other requirements such that it will be fit for its intended municipal purpose, except for property acquisitions of 50M² or less for transit shelter purposes.
- (i) Authority to initiate the permanent road closure process in **A.4** is conditional upon confirmation by the GM of Transportation Services that it is feasible to permanently close the highway.
- (j) Disposal authorities in **A.7** are subject to the property having been declared surplus, and the disposal policy complied with.
- (k) Land exchanges, except for those in **A.8**, may be authorized based on the delegated Approving Authority for disposals in **A.7**.
- (l) Approving Authority with respect to land located in the Designated Waterfront Area as defined in the *Toronto Waterfront Revitalization Corporation Act, 2002* is conditional upon the approval of the Director, Waterfront Secretariat.
- (m) Authority to approve an exchange of land in **A.8** is conditional upon confirmation by the Chief Planner and Executive Director of City Planning, and the GM of Parks, Forestry & Recreation, that the land being exchanged is (i) nearby land of equivalent or larger area, and (ii) of comparable or superior green space utility.
- (n) Approving Authority in **A.9** Leases (City as Landlord) but not Licences (City as Licensor) is limited to periods (including options/renewals) of less than twenty-one (21) years, as leases of 21 years or more may be authorized based on the delegated Approving Authority for disposals in **A.7**.
- (o) Total compensation in leasing matters where the City is landlord (**A.9**) includes the value of tenant improvements if factored into tenant's rental payments.
- (p) Total compensation in leasing matters where the City is the tenant (**A.10**) includes the value of any tenant improvements to be paid by the City.
- (q) Where options/renewals are included in leases, if the renewal rent is to be determined at a date later than the original approval date, total compensation is to be calculated as though all options are exercised, estimating the renewal rent based on the highest rent payable in the first term of the lease.
- (r) Total compensation in leasing matters where the City is landlord (**A.9**) or tenant (**A.10**) is to be calculated from the date of approval pursuant to this delegation (ie. first allowing for the expiry of any prior approvals, whether by Council or a delegated authority).
- (s) Approving Authority in leasing matters includes authority to approve renewals/extensions within the parameters of the delegated Approving Authority.
- (t) Approving Authority includes authority for amendments within the parameters of the delegated Approving Authority, the cumulative total of which may not exceed the delegated financial limit.
- (u) Where proposed additional amounts in **A.13** exceed 10 per cent of the original decision, even if otherwise in compliance with all other conditions, then Approving Authority is transferred upwards to the next more senior level of Approving Authority having the relevant overall financial limit.
- (v) Approving Authority includes authority for all documents necessary to implement the authority, including ancillary agreements, on terms and conditions satisfactory to the Approving Authority, in consultation with the relevant operating Division(s).
- (w) Staff positions referred to in this delegation include successors from time to time.
- (x) Documents are to be in a form satisfactory to the City Solicitor (including indemnity and insurance provisions).
- (y) Delegated signing authorities in **B** are conditional upon the documents having received the City Solicitor's prior "Approval as to Form".
- (z) Authority to use land acquired by the City for parking purposes by the Toronto Parking Authority is conditional upon Council enacting a by-law designating such use.
- (aa) All residential leasing documents shall adhere to the *Residential Tenancies Act, 2006* and any successor legislation.
- (bb) Despite GC(n), Approving Authority in residential leasing matters is not limited to periods of less than twenty-one (21) years and total compensation in residential leasing matters where the City is landlord is to be calculated based on an assumed term of ten years unless the lease term expressly identified therein is longer.
- (cc) Where Approving Authority has been delegated to the Manager level, such authority shall be conditional upon the Manager first having secured the written concurrence of a second Manager within the Real Estate Services Division.

Comments (Continued from Page 1)

Cresford advised that for this project, there is no general contractor between Cresford as project owner, and its sub-contractors. Cresford is acting as its own general contractor. As such, there is no separation between the project owner and the general contractor, which is a pre-condition to L&M Bonds being underwritten on behalf of a general contractor. Without the trustee arrangement, the L&M Bonds have no validity. Therefore, Cresford has requested that the requirement to provide a 100% L&M Bond be waived as a requirement for Commencement of Construction under the APS and Construction Procedures Agreement.

Cresford has therefore requested the TPA's / City agreement to revise the terms of the APS as follows;

- (i) the postponement of the obligation to provide shoring and excavation permits prior to the start of construction; and
- (ii) waiving the requirement for a 100% labour and material bond.

As part of the consideration for these proposed amendments, Cresford has agreed to double the amount of compensation payable to TPA for lost income from \$125,000.00 to \$250,000.00 per month, beginning February 1, 2019 until such time as they obtain from the City the shoring and excavation permits. All other terms and condition of the APS with Cresford to remain unchanged.

Although the 100% labour and material bond requirement is being waived, the APS requires Cresford to deliver an irrevocable letter of credit in an amount not less than 110% of anticipated construction costs as determined by the quantify surveyor ("LC"), to secure completion of the below grade portion of the project, being 800 parking spaces for the municipal parking garage. Altus Group as quantify surveyor for this project has provided a cost estimate of \$49,869,000. Cresford is therefore required to deliver to TPA, the LC in the amount of \$54,855,900, on or before the earlier of termination or part termination of the TPA Lease for use by TPA of the existing municipal garage, and the Construction Commencement Date. In addition to the LC, the APS requires Cresford to deliver a Performance Bond for the anticipated contracts to be bonded in the amount of \$36,800,000.

Terms

Table 1.0 below, summarizes the major terms and conditions of the proposed Agreement between TPA and Cresford, which agreement remains to be executed between the parties, which remains subject to approval by way of Delegated Authority. The TPA Board approved the proposed amending terms at its meeting of June 25, 2018 as Item PA12.7.

Table 1.0 - Terms and Conditions of the Agreement

1. Commencement of Construction

Notwithstanding the definition of "Commence Construction" or "Commencement of Construction" in clause 1.1(n) of the Purchase Agreement, TPA agrees that Cresford may commence and proceed with demolition of the Parking Garage without having obtained a shoring and excavation permit from the City provided that:

- (i) all necessary permits including demolition permits have been obtained by Cresford for such demolition;
- (ii) Cresford shall not carry out any excavation of the Retained Lands until it has obtained the necessary shoring and excavation permits from the City; and
- (ii) if Cresford has commenced demolition of the Parking Garage and has not obtained the necessary shoring and excavation permits from the City by February 1, 2019, then from February 1, 2019 until the date that Cresford obtains said permits, Cresford shall pay to TPA twice the amount of compensation otherwise payable to TPA for lost income pursuant to Section 11.12 of the APS plus HST thereon;

2. Labour and material Bond

The requirement for delivery of a 100% labour and material bond, as referred to in Section 11.1(d)(i) of the Purchase Agreement and in Section 3.1(e)(i) of the Construction Procedures Agreement, is hereby waived.

Summary

A key benefit from TPA's perspective of approving the requested APS amendment is that it will allow for the earlier commencement of construction of the project which in turn is expected to advance the timeline related to the delivery of the completed public parking garage. Cresford has also advised that they expect to be in a position to submit their development application by the end of June 2018 along with a payment of development fees amounting to \$1,365,684.02 which represent 60% of their total development fees of \$2,276,140.03. The application fee associated with the shoring and excavation permit totals \$285.97.

APPENDIX 'A' SITE LOCATION MAP

