

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: April 6, 2011

SUBJECT: PARLIAMENT LOOP LAND EXCHANGE

ACTION ITEM:

RECOMMENDATION

It is recommended that the Commission authorize staff to execute a Memorandum of Understanding (MOU) between Toronto Parking Authority (TPA), Toronto Transit Commission (TTC) and the City of Toronto (City), substantially on the terms contained in Appendix A, and in a form satisfactory to TTC's General Counsel, noting that TTC will obtain a transfer of Operational Management rather than acquire registered title to a replacement site as previously approved by the Committee of the Whole.

FUNDING

Funding arrangements specified in the terms of the MOU remain as originally approved.

BACKGROUND

At its May 21, 22 and 23, 2003 meeting, City Council directed City staff to work on a comprehensive package to bring the ownership of part of the site of the First Parliament Buildings circa 1796 at 265 Front Street into public ownership. As part of a complex multi-party land exchange agreement, TTC owned Parliament Loop was declared surplus by the Commission and leased to 1255870 Ontario Limited for 20 years as part of the replacement site for the Porsche dealership originally intended for 265 Front Street.

The matter was raised to the Committee of the Whole at its meetings of August 27, 2003, October 22, 2003 and February 25, 2004 and approved by TTC subject to conditions.

As part of the overall package, a land exchange between TPA, TTC and the City regarding the TTC Parliament Loop and the TPA parking lot #45 at 111 Broadview was contemplated in a draft Memorandum of Understanding that was not executed pending satisfaction of TPA's conditions. TPA's Board of Directors have approved the terms of the MOU and their conditions have now been substantially satisfied following City Council's approval of funding at the August 25, 26 and 27, 2010 meeting.

DISCUSSION

TTC is currently the registered owner of the 70 Parliament Loop property. It was mutually agreed in 2003, and confirmed by the Commission, that the TTC would also hold registered title to a replacement property.

Since the Commission's original approval of the terms of the MOU in 2003, the City's policy regarding real estate assets has evolved. The City now wishes to transfer Operational Management of the replacement site to the TTC, rather than registered title to the land as originally agreed and approved, and have revised the terms.

In addition to title, the terms now include the possibility of substituting an alternative property to 111 Broadview for TTC use.

The revised terms of the MOU are attached as Appendix A, which will also be an appendix to a City Staff Report to an upcoming Government Management Committee meeting.

As a result of the revisions, TTC will now be giving up an asset that will not be replaced with another asset but rather a permission to use. However, the financial terms of the MOU have not changed and TTC will continue to receive some financial compensation arising from a land exchange.

JUSTIFICATION

Approval of the revised terms reflects changes in City policy and allows the transaction to proceed.

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Attachment – Appendix A

MEMORANDUM OF UNDERSTANDING

As directed and authorized by Council to facilitate the sale of the historic site of the First Parliament at 265 Front St. E. to the Ontario Heritage Trust, the TTC has leased, for a twenty year term, its 70 Parliament St property to 1255870 Ontario Inc. in order that the dealership Downtown Fine Cars Inc. may be re-located from the historic site. The TTC's Lease to the 1255870 was carried out on terms approved by Council and by the Commission, including lease incentives towards re-location costs and towards environmental related clean-up costs. The annual net rental payable by the Tenant is \$240,000.00 (+ GST – now HST), indexed by CPI every five years.

To replace 70 Parliament Street ("70 Parliament") the following property transfers, a property acquisition and related financial adjustments among the City, the TTC and the TPA are authorized:

1. BASIC PREMISE

The City shall:

- (a) transfer the operational management of a portion of the TPA's 111 Broadview Avenue property presently operating as Carpark No 45 ("the TPA Property") to the TTC; or
- (b) acquire and transfer the operational management of an alternate property to the TTC.

2. 111 BROADVIEW – THE TPA PROPERTY

- (a) If the TTC decides to replace 70 Parliament by accepting a portion of the TPA Property, the TTC will determine the portion it needs of the TPA Property based on its design for its future transit facilities. The remainder of the TPA Property shall continue to be operated by the TPA according to the TPA's standards, subject to the paramountcy of transit operations.
- (b) Where the portion of the TPA Property not required for TTC purposes cannot be operated as a carpark by the TPA at its standards, the TPA has the right to transfer the operational management of the entire TPA Property to the City or to the TTC and to have the parking spaces of the whole property replaced in accordance with the terms outlined in this memorandum.

- (c) The City shall transfer the operational management of the TTC's portion to the TTC for transit purposes together with such rights as are mutually agreed to be necessary to permit integration of the operation of the transit facilities and the remaining TPA parking lot within the TPA Property. The TTC shall not operate a parking lot on its portion without the consent of the TPA.

3. ALTERNATE AND/OR SUBSTITUTE PROPERTY

- (a) It is estimated that at least 39 TPA parking spaces will need to be replaced by the City for the TPA, however the exact number is subject to change, based on the final design of the transit facilities. TPA has acquired the substitute properties at 134 and 136 Broadview Avenue (the "Substitute Property") to replace approximately 25 parking spaces. As authorized by City Council, at its meeting held on November 30, December 1, 2, 4 and 7, 2009, with the adoption of the recommendations contained in Government Management Report No. GM26.35, the City has compensated TPA for its purchase of the Substitute Property.
- (b) The City shall replace the remaining 14 spaces with additional property within the Queen Broadview BIA (the "Additional Property"). The Additional Property shall be acquired by the City/TPA by negotiation or, if necessary, by expropriation. The cost of the Additional Property will be borne by the City.
- (c) The TTC may decide to replace 70 Parliament by accepting transfer of the operational management of the Substitute Property and/or the Additional Property for its future transit facilities. The TTC will construct its facilities on the Substitute Property and/or the Additional Property instead of on a portion of the TPA Property. At the same time the City transfers the operational management of the Substitute Property and/or Additional Property to the TTC, the TTC will transfer title of 70 Parliament to the City.

4. TIMING

- (a) The City's transfer of the operational management to the TTC of the said portion of the TPA Property will take place when the TTC notifies the TPA and the City that the TTC has finalized its design for the transit loop and determined how much of the TPA Property is required for transit loop purposes and is ready to commence construction.
- (b) At the same time the City transfers to the TTC the operational management of the TTC portion of the TPA Property, the Substitute Property and/or Additional Property, as the case may be, the TTC will transfer title of 70 Parliament Street to the City.

- (c) It is understood and agreed that every effort will be made to replace the parking spaces lost by the TPA prior to the installation of the transit loop, and if the lost spaces have not been replaced, the Director of Real Estate will submit a report to City Council through the appropriate standing committee prior to operational management of the TTC portion of the TPA Property being turned over to the TTC.

5. FINANCIAL ARRANGEMENTS – GENERAL

- (a) The fair market value ("FMV") of the Substitute Property, the Additional Properties and the portion of the TPA Property for which the operational management has been transferred to the TTC shall be appraised by an independent appraiser and shall be based on the highest and best use at the time the properties are acquired. Other terms of reference for the appraisal shall be mutually agreed upon by the City, the TTC and the TPA.
- (b) The cost of the appraisals shall be paid by the City.
- (c) The FMV of the two portions of the TPA Property will be allocated on a pro-rata basis based on area, i.e. the TTC parcel value and the TPA parcel value. For example (based on artificial numbers):

Total area of 111 Broadview Ave property	= 25,000 S.F.
Say area of TTC parcel	= 15,000 S.F.
Appraised FMV entire 111 Broadview site	= \$1,000,000
TTC parcel value = $15,000 / 25,000 \times \$1,000,000$	= \$600,000
TPA parcel value = $10,000 / 25,000 \times \$1,000,000$	= \$400,000

6. FINANCIAL ARRANGEMENTS BETWEEN THE CITY AND THE TPA

- (a) If the FMV of the Substitute Property and the Additional Properties exceeds the FMV of the portion of TPA Property being transferred to the TTC, the TPA will compensate the City for the differential.
- (b) If the FMV of the Substitute Property and the Additional Properties is less than the FMV of the TTC's portion of TPA's Property being transferred to the TTC, the City will compensate the TPA for this differential.
- (c) City Council, at its meeting on August 25, 26 and 27, 2010, adopted the recommendations, as amended, contained in Government Management Report No. GM33.21, which, among other matters, authorized that \$250,000 from the

FMV of the transfer of operational management of 465 Huron Street, be credited to TPA to compensate for its costs to construct the 39 replacement parking spaces. Therefore, the City has compensated the TPA for the cost to construct the 39 replacement parking spaces.

7. FINANCIAL ARRANGEMENTS BETWEEN THE CITY AND THE TTC

- (a) The TTC shall receive and retain the Tenant's Basic Rent which rent shall be applied by the TTC to the differential owed by the City to the TTC until the earlier of: the date the differential is paid in full to the TTC; or, the date the operational management of 70 Parliament is transferred to the City.
- (b) When the differential owing by the City to the TTC has been paid in full by means of the Basic Rent while the TTC has title of 70 Parliament, the TTC shall forward all subsequent Basic Rent in monthly installments to the City.
- (c) If the FMV of the Substitute Property and/or the Additional Properties are less than the FMV of 70 Parliament, the differential, being the amount by which the FMV of 70 Parliament is greater than the FMV of the Substitute and/or the Additional Properties or greater than the FMV of the TTC portion of the TPA Property, shall be paid by the City to the TTC.
- (d) In addition to FMV, calculation of the differential will be based on the following considerations:
 - (i) The TTC's Lease of 70 Parliament to 1255870 provides that the TTC shall bear up to a maximum of \$500,000 of the Tenant's environmental compensation costs to remove contaminated fill in excess of the costs to remove clean fill. The Basic Rent credited to the City, as payments of the differential owed by the City to the TTC, shall include Basic Rent paid by the Tenant to the TTC and shall not be reduced by the amount of the Environmental Costs Compensation which the Tenant is allowed by the Lease to deduct from its Basic Rent payable to the TTC.
 - (ii) Where, after the transfer of title of 70 Parliament to the City, the Tenant has environmental compensation costs within the \$500,000 limit not yet deducted by the Tenant from the Basic Rent, such amount still deductible by the Tenant from the Basic Rent due the City shall be treated as a credit against the balance of the differential owed by the City to the TTC and shall be deducted from the balance of the differential.

- (e) Basic Rent received by TTC from the Tenant while the TTC was owner and landlord shall be totaled. That amount of rent shall be deducted from the differential in the FMV of the 70 Parliament Loop and the FMV of TTC's portion of the TPA Property or the Substitute Property. The balance of the differential shall be paid by the City to the TTC as if it were the principal of a loan from the TTC to the City amortized over the balance of the Lease term with interest at the prime rate as of the date of the transfer of title of 70 Parliament to the City. The City shall pay such amortized annual amount in advance to the TTC each year after 70 Parliament is transferred to the City.

- (f) The Lease of 70 Parliament also entitles the Tenant each year during the 20 year Lease term to deduct from the Basic Rent an annual amount of \$38,438.00 as the lease incentive in respect of the Tenant's relocation costs. As these relocation costs are the City's obligation, after title of 70 Parliament is transferred by the TTC to the City, the City shall, during the remaining term of the Lease, pay to the TTC the amount of the relocation lease incentive deducted by the Tenant from its Basic Rent due the TTC while the TTC was the owner of the property, as follows:

The total of the relocation lease incentive deducted by the Tenant from its Basic Rent due the TTC shall be calculated for each year and portion of a year the TTC was the landlord. This deducted amount shall be paid by the City to the TTC as if it were a loan made by the TTC to the City to be paid back by the City over a long term amortization period, but without interest. The total of such re-location lease incentive deducted by the Tenant shall be amortized in an equal annual payment amount for each year of the remaining term of the Lease after the year title of 70 Parliament is transferred by the TTC to the City. Such annual amount shall be paid annually, in advance, by the City to the TTC.