



ADMINISTRATIVE REPORT

Report Date: May 22, 2013
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RTS No.: 10134
VanRIMS No.: 08-2000-20
Meeting Date: May 28, 2013

TO: Vancouver City Council

FROM: Director of Real Estate Services and the General Manager of Real Estate and Facilities Management, in consultation with the Director of Legal Services and General Manager of Engineering

SUBJECT: Property Acquisition by Expropriation for the Powell Street Grade Separation Project - 1201 Franklin Street

RECOMMENDATION

- A. THAT Council approve the terms of an agreement among T.N.T Franklin Holding Ltd., Inc. No. 0791099 (the "Owner"), T.N.T Garment Manufacturing Ltd., Inc. No. 0512124 (the "Tenant") and the City, pursuant to Section 3(1) of the Expropriation Act, R.S.B.C. 1996, C.125 (the "Act"), in which the City agrees to acquire a 521.9 square metre (5618 sq. ft.) portion of land located at 1201 Franklin Street (the "Subject Property") for the Powell Street Grade Separation Project, legally described as PID: 002-457-083, Lot 3, Except Part Included in Plan 14071 Block M, District Lot 182, Plan 13917 ("Lot 3") as shown on Appendix A. The Subject Property is also shown in bold outline on Plan, prepared by Fred Wong, B.C.L.S completed on May 22, 2013 and marginally numbered LD 5386, a copy of which is attached as Appendix B;
- B. THAT Council approve the following:
- i) Payment of \$574,000 to the Owner as an advance payment;
 - ii) Payment of \$17,000 for the rental of a temporary storage yard; and
 - iii) Payment to the Owner and/or the Tenant of an amount not to exceed \$500,000 for projected business loss.

Funding to be provided from CER 00117-11-AA within the approved 2013 Engineering Capital Budget; and

- C. THAT Council further authorize the Director of Legal Services in consultation with the General Manager of Engineering Services to proceed with the necessary arrangements to establish the Subject Property for road.

If Council approves this report, the Formal Resolution to establish the Subject Property for road will be before Council later on the agenda for approval.

REPORT SUMMARY

The purpose of this report is to request that Council approve the terms of an agreement (the "Sec. 3(1) Agreement") among the Owner, the Tenant and the City, pursuant to the Act, in which the City agrees to acquire the Owner's fee simple interest in the Subject Property.

The Sec. 3(1) Agreement states that the City and the Owner have agreed that the Owner will agree to transfer the fee simple interest in the Subject Property to the City, an expropriating authority, without expropriation, but cannot agree with the expropriating authority on the compensation to be paid to the Owner for such transfer. If the parties are unable to agree on the compensation for such transfer, the Owner and the Tenant may apply to the Supreme Court of British Columbia to determine the compensation payable pursuant to Section 3(1) of the Act.

COUNCIL AUTHORITY/PREVIOUS DECISIONS

Section 532 of the Vancouver Charter provides that if, in the exercise of any of its powers of acquiring real property, the City fails to come to an agreement with its owner as to the terms of acquisition, the City may by by-law or resolution of the Council, expropriate such real property.

CITY MANAGER'S/GENERAL MANAGER'S COMMENTS

The General Managers of Real Estate and Facilities Management and Engineering Services recommend approval of the foregoing.

REPORT

Background/Context

On April 23, 2013, Council authorized the City, as expropriating authority, to commence expropriation proceedings to acquire the Subject Property for the Powell Street Grade Separation Project. The City presented the Owner with an offer of \$574,000 for the Subject Property, based on an independent appraisal report prepared by the Altus Group dated April 1, 2013. The Owner rejected the City's offer of \$574,000 claiming that it did not recognize the impact that the taking has on the business operations. To address the Owner's concerns, the City has retained the services of Ernst & Young LLP Chartered Accountants to value the impact that the taking has on the business operations and to determine if the Owner and/or the Tenant should be receiving additional compensation for the taking. As the findings of this report are not expected until June 30, 2013, the amount of additional compensation

that could be payable to the Owner is not yet known, but it is not expected to exceed \$500,000.

Strategic Analysis

The City and the Owner have agreed in the Sec. 3(1) Agreement that the Owner will transfer its fee simple interest in the Subject Property to the City on the following basis:

1. The Owner will transfer to the City as of June 12, 2013 (the "Transfer Date") all of the Owner's title in and to the Subject Property (being the estate in fee simple) free and clear of all encumbrances except for the Right of Way 531334M (in favour of the City) and Easement and Indemnity Agreement N79916 (in favour of the City) and to deliver vacant possession of the Subject Property to the City no later than 12:00 pm on the Transfer Date.
2. On the Transfer Date, the City will pay the Owner an advance payment of \$574,000 (other than for business loss) based on the estimated loss in value of Lot 3, as determined in the Altus Group appraisal report.
3. If the parties are unable to agree on the compensation (estimated loss in value of Lot 3 and business loss) for such transfer, the Owner may apply to the Supreme Court of British Columbia to determine the compensation payable pursuant to Section 3(1) of the Act.
4. The City will be responsible for building modifications including the removal and relocation of the loading doors, front entrance and parking on the Subject Property to the eastern side of Lot 3. The funding for this work was approved at an In Camera Council meeting on April 23, 2013 (RTS 10068).
5. To allow the proposed building modifications to be carried out, the City will rent a temporary storage yard at 1299 Powell Street at a cost of \$17,000 for the relocation of the cargo containers that are currently stored on the southeast corner of Lot 3. The items currently stored on the Subject Property will then be relocated to the eastern side of Lot 3.
6. In the future, should the Owner determine that additional yard space is required for storage, the City, subject to Council approval, will agree to sell at fair market value to the Owner, one of the City's surplus properties on Franklin Street not required for the Powell Street Overpass Project.
7. The Owner and the Tenant will appoint Ventana Construction Corporation ("Ventana") as prime contractor, and sign an agreement, for the purpose of s.118 of the Workers Compensation Act, to appoint Ventana to act as the "prime contractor" (within the meaning of that section) for the "multiple-employer workplace" (within the meaning of that section) that will exist on the Subject Property and Lot 3, in connection with the proposed building modifications.

8. The Owner, the Owner's lender, and the Tenant will sign a Licence Agreement granting the City and Ventana access to Lot 3.

Financial

The estimated cost of acquiring the Subject Property is:

- i. \$574,000 for the advance payment under the Sec. 3(1) Agreement;
- ii. The estimated business losses not expected to exceed \$500,000; and
- iii. \$17,000 for the rental payment for the storage yard,
for a total acquisition price of \$1,091,000.

Property acquisition costs are shareable with Port Metro Vancouver, Canadian Pacific Railway and Translink. The City's net share of these costs are 12%. Funding for the acquisition is available from CER-00117-11-AA within the approved 2013 Engineering Capital Budget.

CONCLUSION

In the opinion of the Director of Real Estate Services, the terms of the Sec. 3(1) Agreement are reasonable.

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