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**TO:** GENERAL COMMITTEE

**SUBJECT:** AUTHORIZATION TO AMEND AGREEMENT FOR MCDONALD-OWEN PARKING LOT

**WARD:** 2

**PREPARED BY AND KEY CONTACT:** P. DYCK, BUSINESS DEVELOPMENT OFFICER, X5228

**SUBMITTED BY:** S.SCHLICHTER, DIRECTOR, BUSINESS DEVELOPMENT

**GENERAL MANAGER APPROVAL:** Z. LIFSHIZ, EXECUTIVE DIRECTOR, INVEST BARRIE

**CHIEF ADMINISTRATIVE OFFICER APPROVAL:** M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

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### **RECOMMENDED MOTION**

1. That the City Clerk be authorized to execute an amendment to the following terms and conditions contained within the Agreement of Purchase and Sale between The Corporation of the City of Barrie (the Seller) and Forrest Group Acquisitions Ltd. (the Buyer) for the 0.52 acre parcel of City-owned land known municipally as 55-57 McDonald and 61-67 Owen Street in a form satisfactory to the Director of Business Development and the Director of Legal Services:
  - a) An abatement of the purchase price in an amount not to exceed \$200,000; and/or
  - b) Consideration to allow for the Buyer to close on the agreement prior to Planning application approvals being issued and accepted for the property.

### **PURPOSE & BACKGROUND**

#### **Report Overview**

2. The purpose of this report is to seek delegated authority to amend two items in the Agreement of Purchase and Sale between Forrest Group Acquisitions Ltd. and the City of Barrie as a result of the Buyer working through their due diligence process.
3. Specifically, the report is seeking authority to amend the following in a form acceptable to the Director of Business Development and the Director of Legal Services to abate the purchase price by a maximum of \$200,000.00 and to amend conditions to permit the Buyer to close on the property prior to their issuance and acceptance of Site Plan conditions.
4. On June 19<sup>th</sup>, 2017 Council adopted Motion 17-G-149 "Sale of Surplused Downtown Parking Lot 55-57 McDonald Street/61-67 Owen Street" as follows:
  - a) That the City Clerk be authorized to execute the Agreement of Purchase and Sale between the City and Forrest Group Acquisitions Ltd. (the Buyer) for the 0.52 acre parcel of City-owned land described as PIN's 588170026, 588170027, 588170174, 588170024, 588170025, City of Barrie, County of Simcoe, (the Property) on the south-east corner of McDonald Street and Owen Street, also known municipally as 55-57 McDonald and 61-67 Owen Street, for the purchase price of \$1,000,000, subject to the Conditions of Purchase and Sale attached as 'Appendix A' to Staff Report BDD006-17;

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- b) That the City Clerk in consultation with the Director of Business Development and Director of Legal Services be authorized to execute any consent or authorization documents which would permit the Buyer, in lieu of the owner of the Property, to process any necessary Zoning By-Law, Official Plan Amendments, variances, pre-consult and site plan applications, solely at the Buyer's risk and expense;
  - c) That an amount, not to exceed \$30,000, be allocated from the Industrial Land Reserve (13-04-0430) to complete a Phase II Environmental Site Assessment for the Property and that the funds be returned to the Industrial Land Reserve upon sale of the Property;
  - d) That the City Clerk be authorized to execute all associated and required documents as necessary and amend terms and conditions contained in the Agreement of Purchase and Sale on the recommendation of the Director of Business Development, in a form approved by the Director of Legal Services;
  - e) That proceeds from the sale of the Property, in the amount of \$106,424 be allocated to the Industrial Land Reserve (13-04-0430), with the remaining amount allocated to the Parking Reserve.
5. An Agreement of Purchase and Sale was signed and accepted by both parties on June 23<sup>rd</sup>, 2017, with a series of conditional dates that permitted The Forrest Group to complete its due-diligence period for environmental, geotechnical, soils as well as Planning approvals. Several extensions have been provided in the initial conditional period due to the ongoing complexities in assessing and reviewing issues with the environmental, engineering and geotechnical that have been identified through the due diligence process.
6. Environment issues identified through the completed Phase II Environmental Study determined that the parking lot site is contaminated with salts; most likely road salts used during the winter months. The corner section of the parking lot has a particularly deep infiltration of salt which will need to be excavated and dumped in the appropriate facility. Fees to conduct this work have been estimated to be an additional \$518,000.
7. The geotechnical investigation revealed a high volume of water and permeable soils of the site, which has had an impact on the development and the volume of parking that can be located underground.
8. The diligence period also revealed the existence of a municipal infrastructure (storm pipe) running across the corner of the parking lot that was not identified at the time of sale. The storm pipe is situated roughly 10m in from the intersection requiring the developer to relocate the pipe into the road, in order to maximize development of the site as intended at the time of sale. Estimates to relocate the storm pipe from the corner of the lot and install a new one into the road Right of Way were not contemplated as part of the valuation of the property nor at the time of sale.
9. The Forrest Group obtained an estimate to remove the storm pipe from the corner of the lot and relocate the pipe that totalled \$234,000. Engineering Staff have reviewed the estimate and consider some of the items to be non-essential, and have identified that there may be some alternate solutions that could be more cost effective, pending further investigation around the conveyance of the flow through the pipe. As such, more work is being conducted to validate the relocation requirements for the storm pipe and associated value of the works.
10. The Forrest Group is within its due-diligence period, and has invested significantly in the associated investigations and development applications required to meet the conditions of the Agreement of Purchase and Sale.

11. The Forrest Group has also requested consideration to advance the closing date on the purchase in order to secure its investment in the lands and support their business needs for financing. They have indicated that their investment will be upwards of \$1.0 Million dollars once they achieve zoning and a Record of Site Condition for the site, in addition to approximately \$550,000.00 to complete their Site Plan process. The Forrest Group is still reviewing their business matters to confirm if this is a critical element to the development moving forward.
12. Further investigation into the impact of advancing the close related to the continued operation of the site for public parking is required by Staff prior to the acceptance and completion of an amendment.
13. Given that that both proposed amendments require the approval of Council, Staff are requesting authority to complete the investigations and associated amendment during the 'lame duck' period, to ensure the development moves forward.

### **ANALYSIS**

14. In 2016 the City commissioned an appraisal of the parking lot which determined the value range to be \$975,000 - \$1,125,000. This was based on the potential buildable area within the existing zoning, estimated to be 64,860 sq.ft. and that the property was free and clear of any encumbrances.
15. In a recent update with the appraiser concerning the previously unidentified storm pipe and its required relocation in order to facilitate development on the property, their standard practice is to deduct the 'additional' expense directly from the purchase price. In this case, Staff are seeking approval to abate the sale price by a maximum of \$200,000 pending validation of the true cost impact of the storm pipe.
16. Advancing the closing date ahead of the Buyer accepting the conditions of Site Plan approval, places the risk of the Planning matters not being resolved to the satisfaction of the Buyer and places the risk on the Buyer. Further, Staff will further establish amendment terms that ensure that the parking lot remains being utilized for that purpose, until such time as the property is in a position to the developed.

### **ENVIRONMENTAL MATTERS**

17. The following environmental matters have been considered in the development of the recommendation:
  - a) The City completed a Phase I Environmental Assessment at its cost. The recommendation from this assessment suggested that a Phase II be completed. As part of the purchase agreement the City agreed to cover a Phase II Environmental Assessment up to \$30,000 in cost. (which has been completed)
  - b) The Phase II and the associated drilling and soil tests determined that areas of the parking lot, notably the northwest corner, contained salts requiring a clean-up according the MOE standards. The salts where located up to 11 meters deep requiring extensive dig and dump procedures at a total environmental cost of roughly \$500,000. Staff are not recommending any price offset due to environmental constraints, however the Buyer is eligible to apply for the City's Community Improvement Program (CIP) Grants for brownfield reclamation.
  - c) In order to obtain a 'Record of Site Condition' (RSC) the Ministry of Environment is first requiring that both Forrest Group and the City complete a Modified Generic Risk Assessment. The MGRA is intended to provide streamlined approach to developing property specific standards when completing the RSC.

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## **ALTERNATIVES**

18. The following alternatives are available for consideration by General Committee:

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### **Alternative #1**

General Committee could choose not to authorize Staff to complete a price abatement for the property and require the Buyer to accept all costs associated with the development.

This alternative is not recommended given that the storm pipe was not identified at the time of purchase and impacts the development of the site, Staff feel the appropriate approach regarding offsetting the unexpected costs should be accommodated and limited to a maximum of \$200,000 pending the completion of the investigation of other cost effective solutions.

### **Alternative #2**

General Committee could choose not to support an amendment to advance the closing date prior to the approval of site plan conditions.

This alternative is not recommended as advancing the closing date ahead of the Buyer accepting the conditions of Site Plan approval, places the risk of the Planning matters not being resolved to the satisfaction of the Buyer and places the risk on the Buyer. Further, Staff will further establish amendment terms that ensure that the parking lot remains being utilized for that purpose, until such time as the property is in a position to the developed.

### **Alternative #3**

General Committee could choose not to give authority to the Clerk to execute an amendment to the Agreement of Purchase and Sale satisfactory to the Director of Business Development and Director of Legal Services.

This alternative is not recommended as both proposed amendments require the approval of Council. To ensure that the development moves forward in a timely manner, Staff are requesting authority to complete the investigations and associated amendment during the 'lame duck' period.

## **FINANCIAL**

20. At the time the sale of the property was approved, a net amount of \$868,353 was to be allocated to the Parking Reserve from the \$1.0 Million dollar purchase price. The allocation took into account the recovery of funds back to the Industrial Land Reserve that were front-ended to complete the Phase II of the subject property (\$30,000), appraisal work and Phase I studies identified in Council Motions 15-G-160 and 16-G-03 as part of the disposition process for the downtown parking lots (\$76,424 +HST).
21. In addition, the Purchaser also used a broker for the purchase of the land. The City stipulated as part of its disposition process to pay a commission of 2.5% (plus HST) on the total sale price of the Property. The commission was calculated at \$25,440 at the \$1.0 Million purchase price.
22. As such, the \$868,353 (sale price less commission, less Phase II ESA cost, less costs expended for Phase I ESA, marketing and appraisal work) will be downwardly adjusted by a maximum of \$200,000.00 pending the validated, direct costs associated with eliminating the impact of the storm pipe across the property. There will also be an upward adjustment based upon the commission calculation, should the purchase price of the property be reduced.

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**LINKAGE TO 2014-2018 STRATEGIC PLAN**

23. The recommendation(s) included in this Staff Report support the following goals identified in the 2014-2018 Strategic Plan:
- ☒ Vibrant Business Environment
24. The sale of city-owned parking lots in the downtown core facilitates the multiple strategic objectives for the City's downtown. In brief, the sale and development aligns with the City's vision growth, economic development and social needs. The proposed amendments support the continuance of the development and will generate tax and development revenue for the City.