

File No.: 04-1000-20-2018-160

June 15, 2018

s.22(1)

Dear s.22(1)

Re: Request for Access to Records under the Freedom of Information and Protection of Privacy Act (the "Act")

I am responding to your request of March 16, 2018 for:

The City sold the property at 1733 East 18th Avenue [formerly Lot 2, Block A, District Lot 753, Plan 1795; PID: 009-908-200]. This request is for all sales agreements related to this property, including MOUs and agreements in principle prior to the final sale.
(report reference: <http://council.vancouver.ca/20160419/documents/p4.pdf>)

All responsive records are attached.

Under section 52 of the Act you may ask the Information & Privacy Commissioner to review any matter related to the City's response to your request. The Act allows you 30 business days from the date you receive this notice to request a review by writing to: Office of the Information & Privacy Commissioner, info@oipc.bc.ca or by phoning 250-387-5629.

If you request a review, please provide the Commissioner's office with: 1) the request number assigned to your request (#04-1000-20-2018-160); 2) a copy of this letter; 3) a copy of your original request for information sent to the City of Vancouver; and 4) detailed reasons or grounds on which you are seeking the review.

Please do not hesitate to contact the Freedom of Information Office at foi@vancouver.ca if you have any questions.

Yours truly,



Barbara J. Van Fraassen, BA
Director, Access to Information & Privacy

Barbara.vanfraassen@vancouver.ca
453 W. 12th Avenue Vancouver BC V5Y 1V4
Phone: 604.873.7999
Fax: 604.873.7419

Encl.

:ma

SALE CONTRACT

SCANNED

Effective Date: September 16, 2015

Parties: City of Vancouver and Cressey Projects Corporation, Incorporation Number 0495694

Consideration: In return for the Deposit and the Buyer's agreements, the receipt and sufficiency of which the Seller acknowledges, and in return for the Seller's agreements, the receipt and sufficiency of which the Buyer acknowledges, the Seller and Buyer agree to be bound by the terms and conditions of this Contract.

Contract terms and conditions: The Seller and Buyer represent and agree that:

SECTION 1 INTERPRETATION

1.1 Definitions. In this Contract:

- 1.1.1 "Buyer" means Cressey Projects Corporation Incorporation Number 0495694 ;
- 1.1.2 "Buyer's Land" means certain lands in Vancouver, British Columbia described as:
 - (i) Parcel Identifier: 009-908-056, Lot 4, Blocks A&B, DL 753, Plan 8865, and having a civic address of 3365 Commercial Drive;
 - (ii) Parcel Identifier: 009-649-123, Lot 5, Blocks A&B, DL 753, Plan 8865, and having a civic address of 1695 East 18th Avenue;
 - (iii) Parcel Identifier: 014-282-810, Lot 3, Except the 7 Feet, Now Road, Block A, DL 753, Plan 1795, and having a civic address of 1707 East 18th Avenue;
 - (iv) Parcel Identifier: 005-338-115, Lot 1, Block A, DL 753, Plan 1795, and having a civic address of 1775 East 18th Avenue;
- 1.1.3 "Buyer's Representatives" mean the firm of lawyers or notaries public the Buyer appoints to represent it in the purchase of the Seller's Land;
- 1.1.4 "City's Legal Director" means the Director of Legal Services for the City of Vancouver;
- 1.1.5 "Closing Date" means the date which is 30 calendar days after the date the Buyer delivers copies of the Rezoning Documents executed by the Buyer and any other Person (as required by the City), and as applicable, or such earlier date the parties may agree to provided that:
 - (i) if the LTO is not open on that day, the Closing Date will be the first following day that the LTO is open for business;
 - (ii) If the Buyer does not deliver the Rezoning Documents to the Seller by October 31, 2016 this Contract will be null and void.

- 1.1.6 "Consolidated Land" means the legal parcel created by the Consolidation Plan;
- 1.1.7 "Consolidation Plan" means a reference plan of consolidation prepared by a B.C.L.S. that consolidates the Seller's Land with the Buyer's Land to create one legal parcel, and that is in form acceptable for deposit in the LTO;
- 1.1.8 "Contaminants" mean any deleterious, dangerous, hazardous, corrosive, or toxic substances, pollutants, goods, or waste the manufacture, storage, handling, treatment, generation, use, or transport, or release, disposal or discharge into the Environment, of which any Environmental Laws control, regulate, license, or prohibit or which are or may be deleterious, dangerous, or hazardous to human, animal or plant health or life or the Environment;
- 1.1.9 "Contract" means this document and attached schedules;
- 1.1.10 "Deposit" means \$90,000; being the combined amount of \$65,000 currently held by the Seller; and that amount equaling \$25,000 as the additional deposit contemplated (herein, collectively the Deposit);
- 1.1.11 "Effective Date" means the date set out at the start of this Contract;
- 1.1.12 "Environment" means land including soil, sediment deposited on land, fill and land submerged under water, air including all layers of the atmosphere, and water including oceans, lakes, rivers, streams, ground water, and surface water;
- 1.1.13 "Environmental Laws" mean all laws, statutes, regulations, rules, bylaws, orders, directives, standards, guidelines, and other lawful requirements of any government body including the Environmental Management Act of British Columbia and its regulations, and all principles of common law and equity concerning the quality of the Environment, that apply to the Seller's Land and its surrounding Environment;
- 1.1.14 "GST" means the Goods and Services sales taxes under the Excise Tax Act (Canada);
- 1.1.15 "including" means "including, without limitation";
- 1.1.16 "LTO" means the Vancouver/New Westminster Land Title Office;
- 1.1.17 "Permitted Charges" mean reservations, exceptions, conditions, restrictions, and provisos contained in any Crown grant or Crown disposition of the Seller's Land, unregistered rights of way, easements, or restrictive covenants in favour of government bodies or public utilities;
- 1.1.18 "Person" means any legal entity including any individual, firm, corporation, or government body;

- 1.1.19 "Purchase Price" means \$900,000.00 exclusive of GST, provincial sales tax, property transfer tax, or other like charges;
- 1.1.20 "Rezoning Documents" means all of the documents, legal agreements, plans, and payments which the City requires from the Buyer in order for enactment of the rezoning of the Consolidated Land to proceed;
- 1.1.21 "Seller" means City of Vancouver;
- 1.1.22 "Seller's Land" means certain land in Vancouver, British Columbia described as: Parcel Identifier 009-908-200 Lot 2 Block A District Lot 753 Plan 1795, and having a civic address of 1733 East 18th Avenue, Vancouver, BC;
- 1.1.23 "Support Agreement" means an agreement in favour of the City of Vancouver that commits the Buyer to develop an appropriate support for the existing sidewalk as the Seller's Land is approximately 8' below the sidewalk grade with an earth embankment supporting the street;
- 1.1.22 "Transfer" means the Form A transfer of estate in fee simple conveying the Seller's Land from the Seller to the Buyer.

1.2 Interpretation. The following provisions will apply to this Contract:

- 1.2.22 sections and headings are for convenient reference, and are not to affect the meanings of provisions, and use of the singular or masculine includes the plural, feminine, or body corporate, and vice versa;
- 1.2.23 if a court finds any provision invalid, illegal, or unenforceable, and severs it from this Contract, the remaining provisions are to remain in force and effect;
- 1.2.24 the Seller and Buyer will interpret the language of this Contract simply, fairly, and not strictly for or against either of them;
- 1.2.25 time will be of the essence, and if the Buyer or Seller expressly or impliedly waives that requirement, the Buyer or Seller may reinstate it by delivering notice to the other;
- 1.2.26 this Contract represents the entire agreement between the Buyer and Seller regarding the matters set out in it, and supersedes all prior agreements, understandings, letters of intent, negotiations, or discussion about those matters, and no amendment is to have any force or effect unless the Buyer and Seller have signed it;
- 1.2.27 references to statutes and bylaws are to them as they exist on the Effective Date, and to later amendments or replacements of them; and

1.2.28 if there is more than one Buyer, the Buyer's representations and agreements will be joint and several.

**SECTION 2
SALE AND PURCHASE**

2.1 **Sale and purchase.** The Seller will sell the Seller's Land to the Buyer on an "as is, where is" basis, as of the Closing Date free from all liens, charges, or encumbrances except for Permitted Charges, and the Buyer will purchase the Seller's Land from the Seller, subject to the terms and conditions of this Contract.

2.2 **Purchase price.** The Buyer will pay the Purchase Price to the Seller for the Seller's Land.

2.3 **Deposit.** *WITHIN 5 BUSINESS DAYS OF THE* ~~Concurrent with the execution of this Contract by the Buyer, the Buyer will deliver to the Seller a bank draft in the amount of \$25,000.00 as the additional deposit. If the transaction completes in accordance with the terms of the Contract, the Deposit will be a credit against the Purchase Price. If the transaction does not complete because the Seller defaults in complying with the Seller's obligations under this Contract, the Seller does not waive any unfulfilled condition under section 4.1, or the Buyer does not waive any unfulfilled condition under section 4.2, the Seller will return the Deposit to the Buyer on demand. If the transaction does not complete because the Buyer defaults in complying with the Buyer's obligations under this Contract, the Seller may retain the Deposit on account of damages and not as a penalty and without prejudice to the Seller's other rights or remedies under this Contract or at law or equity.~~ *as a genuine pre-estimate of liquidated damages as their sole and exclusive remedy*

2.4 **Closing.** The completion of the sale and purchase of the Seller's Land will occur on the Closing Date.

**SECTION 3
REPRESENTATIONS**

3.1 **Seller's representations.** Regardless of any independent investigations the Buyer may make, the Seller represents to the Buyer, as representations that are true and correct on the Effective Date and will be true and correct on the Closing Date, that:

3.1.1 in response to the Buyer's inquiry under section 116 of the Income Tax Act (Canada) and under Part IX of the Excise Tax Act (Canada), the Seller is a resident of Canada within the meaning of those Acts, and, in the case of the Excise Tax Act, the Seller is resident in Canada by reason other than subsection 32(2) which deems a non-resident to be resident in Canada if that non-resident has a permanent establishment in Canada;

3.1.2 the Seller is the registered and beneficial owner of the Seller's Land, has good, safeholding, and marketable title to the Seller's Land, free from all liens, charges,

or encumbrances, except for Permitted Charges, and has sufficient, power, authority, and capacity to execute and deliver this Contract to the Buyer;

3.1.3 by completing the sale of the Seller's Land to the Buyer, the Seller will not be in breach of any statute or bylaw or of any agreement by which the Seller is bound;

3.1.4 on the Effective Date, except for Permitted Charges, the Seller will not owe money to any Person which will constitute a lien, charge, encumbrance, or claim against the Seller's Land; and

3.1.5 the Seller has no knowledge that any government body intends to expropriate all or part of the Seller's Land, or that any government body has issued or intends to issue any order or notice regarding the Seller's Land.

3.2 No other representations. The Seller is not giving to the Buyer, and the Buyer is not requiring from the Seller, any express or implied representation regarding the dimensions or area of the Seller's Land or that, before or after the Effective Date or Closing Date:

3.2.1 the Seller's Land and its surrounding Environment complies or does not comply with Environmental Laws;

3.2.2 the Seller's Land and its surrounding Environment is or is not free from Contaminants;

3.2.3 any Contaminants have or have not been released, spilled, leaked, pumped, poured, emitted, emptied, discharged, dumped or disposed of, or have or have not escaped, leached, or migrated, from the Seller's Land and its surrounding Environment to, on, or under adjacent lands or their surrounding Environment; or

3.2.4 the Seller's Land will or will not be environmentally or otherwise suitable for any purpose including occupancy, development, or derivation of revenue.

3.3 Buyer's representations. Regardless of any independent investigations the Seller may make, the Buyer represents to the Seller, as representations that are true and correct on the Effective Date and will be true and correct on the Closing Date, that:

3.3.1 if the Buyer is a corporation, it is in good standing under the laws of British Columbia, and it has sufficient power, authority, and capacity to deliver this Contract to the Seller and to buy the Seller's Land from the Seller;

3.3.2 the Buyer has no knowledge that any person associated with the Seller has any direct or indirect interest in this sale and purchase; and

3.3.3 the Buyer has had or will have prior to the date referred to in section 4.2, full opportunity to make all appropriate inquiries into the previous ownership and uses of the Seller's Land, and to undertake all other investigations consistent with good

commercial or customary practice, in order to determine the condition, state of compliance with Environmental Laws, and fitness for purpose of the Seller's Land.

SECTION 4 CONDITIONS

4.1 Seller's conditions. Despite anything to the contrary in this Contract, the Seller's obligation to complete the sale of the Seller's Land to the Buyer will be subject to the conditions that, on or before:

- 4.1.1 on or before August 31st, 2016, the Seller's City Council will have granted approval in principle of the by-law to rezone the Consolidated Land;
- 4.1.2 on or before the Closing Date, the Buyer will have obtained approval of the Consolidation Plan from the City's Legal Director and will have had the Consolidation Plan executed by all Persons required to execute the Consolidation Plan;
- 4.1.3 on or before the Closing Date, the Buyer will have entered into a registerable Support Agreement satisfactory to the City's Legal Director; and
- 4.1.4 on the Closing Date, the Buyer's representations, set out in Section 3.1 will be true and correct.

4.2 Buyer's conditions. Despite anything to the contrary in this Contract, the Buyer's obligation to complete the purchase of the Seller's Land from the Seller will be subject to the conditions that, on or before:

- 4.2.1 on or before August 31st, 2016, the Seller's City Council will have granted approval in principle of the by-law to rezone the Consolidated Land.

4.3 Effect of conditions. The conditions in section 4.1 are for the Seller's benefit, and the Seller may waive those conditions. The conditions in Section 4.2 are for the Buyer's benefit, and the Buyer may waive those conditions. If the respective condition has not by then yet been satisfied, and:

- (i) If the Seller does not notify the Buyer, before 5:00 p.m. on the date in section 4.1.1, 4.1.2, 4.1.3, or 4.1.4 as the case may be, that it is waiving the condition in that subsection, or
- (ii) If the Buyer does not notify the Seller, before 5:00 p.m. on the date in section 4.2.1, that it is waiving the condition in that subsection,

then the Buyer and Seller will be deemed to have terminated this Contract, and it will have no further force or effect except that the Seller will, subject to Section 2.3, return the Deposit to the Buyer on demand unless the Deposit is nominal.

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SECTION 5
AGREEMENTS

5.1 **Transfer of title.** The Seller will transfer good, safeholding, and marketable title to the Seller's Land to the Buyer on the Closing Date according to the requirements of this Contract, provided that the Buyer has obtained approval for the Consolidation Plan from the Approving Officer and City's Legal Director.

5.2 **Consolidation.** The Buyer, at the Buyer's cost, will arrange for preparation of the Consolidation Plan. The Consolidation Plan will be subject to approval by the City's Director of Real Estate Services and the City's Legal Director as to compliance with the requirements of this Contract.

5.3 **Encumbrances.** The Buyer will conduct a complete review of all charges registered against title to the Buyer's Land in favour of the City and will prepare any extensions, modifications and/or releases required as a result of this transaction and will submit each document to the City's Legal Director for review at least thirty days prior to the Closing Date.

5.4 **Property Condition Disclosure Statement.** The Seller will have no obligation to deliver to the Buyer a Property Condition Disclosure Statement.

5.5 **Investigation.** The Buyer, and its employees, agents, and contractors, may enter the Seller's Land at any time before the Closing Date to carry out, at its cost, such inspections, investigations, tests, and surveys as it considers necessary or desirable. The Buyer will restore the surface of the Seller's Land, and repair any damage it causes in doing so.

5.6 **Condition of Land and Environmental Responsibility.** The Buyer will:

5.6.1 buy the Seller's Land from the Seller "as is, where is";

5.6.2 not rely on any environmental reports or investigations from or supplied by the Seller, and will conduct its own investigations and satisfy itself, at its cost, regarding the matters set out in subsections 5.6.1 to 5.6.4;

5.6.3 waive any requirement for the Seller to provide to the Buyer a site profile for the Seller's Land under the Environmental Management Act of British Columbia or any regulation pursuant to that Act; and

5.6.4 assume full responsibility for the matters set out in subsections 5.6.1 to 5.6.4 and for any remediation of the Seller's Land required under any Environmental Laws.

5.7 **Indemnity.** The Buyer, from and after the Closing Date, will release the Seller, and will also indemnify the Seller and save it harmless from all liabilities, suits, actions, obligations, statutory or other proceedings, judgments, investigations, demands, claims, losses, damages, consequential damages, remediation cost recovery claims, remediation costs, fines, penalties, expenses, and legal costs on a solicitor-client basis, which the Seller may suffer or incur, arising out of or in connection with anything concerning Contaminants or Environmental Laws including:

- 5.7.1 the non-compliance of the Seller's Land or its surrounding Environment with any Environmental Laws;
 - 5.7.2 any investigation or claim of such non-compliance by any Person;
 - 5.7.3 the presence within the Seller's Land or its surrounding Environment of Contaminants; or
 - 5.7.4 the leaching, escaping, or migrating of Contaminants from the Seller's Land or its surrounding Environment to other lands or their surrounding Environment;
 - 5.7.5 whether or not any such event, happening, or condition arose or arises before or after the Effective Date or Closing Date, and whether or not caused in whole or in part or directly or indirectly by the Seller or its officers, employees, agents, or contractors.
- 5.8 **Risk.** The Seller's Land will be at the risk of the Seller until the date and time of submission of the Transfer for registration in the LTO, and, after that, will be at the risk of the Buyer.
- 5.9 **Possession.** The Buyer will have the right to vacant possession of the Seller's Land, subject to Permitted Charges.
- 5.10 **Utilities and services.** If, before or after the Closing Date, the Seller learns of the existence of any pipes, wires, or other utilities or services below, on, or above the Seller's Land that are then in use or that the Seller or any other public authority or utility wishes to use, the Buyer, promptly on request by the Seller, will execute and deliver to the Seller, in form acceptable for registration in the LTO, a statutory right of way satisfactory to the Seller and such instruments of priority for that statutory right of way over other registered charges as the Seller may require.
- 5.11 **Adjustments.** The Seller and Buyer will adjust all items customarily the subject of adjustment in the sale and purchase of property similar to the Seller's Land at the Closing Date.
- 5.12 **Costs, fees, and taxes.** The Seller will pay the costs of clearing title except for Permitted Charges. The Buyer will pay any land title transfer fees and LTO application and registration fees. If the Buyer is a GST registrant and delivers to the Seller, prior to the Closing Date, its GST registration number and such certificate as the Seller may require, the Buyer will remit directly to the Receiver General of Canada any GST payable by the Buyer on the purchase of the Seller's Land, promptly after the Closing Date, and will confirm to the Seller that it has done so. If the Buyer is not a GST registrant, the Buyer will pay to the Seller, on the Closing Date, along with the adjusted Purchase Price, any GST payable by the Buyer on the purchase of the Seller's Land. The Buyer and Seller will each pay their own legal costs. The Buyer and Seller will pay such costs, fees, and taxes when due.

SECTION 6 CLOSING

6.1 Documents. Before the Closing Date:

- 6.1.1 the Buyer will cause the Buyer's Representatives to prepare the Transfer, statements of adjustments, and other conveyance documents required pursuant to this Contract, and to deliver them to the City's Legal Director along with any other documents or evidence the Seller requires from the Buyer under this Contract; and
- 6.1.2 the Seller will sign the documents, and cause the City's Legal Director to return them to the Buyer's Representatives along with the Offsite Parking Agreement.

6.2 Closing. The Buyer will:

- 6.2.1 on the Closing Date, provide the Buyer's Representatives with the adjusted Purchase Price and other money necessary to complete the transaction;
- 6.2.2 on the Closing Date, cause the Buyer's Representatives to conduct a pre-registration index search of the Seller's Land in the LTO, and, if the search indicates that the Seller owns the Seller's Land free from all registered or pending liens, charges, and encumbrances, except for Permitted Charges, to submit the Transfer, Consolidation Plan, Support Agreement, and any other documents required to effect the objectives of this Contract for registration (including without limitation all of the Rezoning Documents required to be registered) as a single package so that the LTO will accept or reject all the documents, supporting applications, and Consolidation Plan;
- 6.2.3 cause the Buyer's Representatives, promptly after the LTO accepts the Transfer and the Consolidation Plan for registration and notes up the registration particulars for the Transfer and Consolidation Plan and other documents, to conduct a post-application index search of the Seller's Land, and, if the search indicates that good, safeholding, and marketable title to the Seller's Land, except for Permitted Charges, will vest in the Buyer in the normal course of the LTO's routine registration process, to pay the adjusted Purchase Price promptly to the City by notifying the City's Legal Director that the adjusted Purchase Price is available for pick up; and
- 6.2.4 if it is unable to comply, or to cause the Buyer's Representatives to comply, with such registration and payment requirements, other than by reason of default by the Seller, to cause the Buyer's Representatives to return the Transfer to the City's Legal Director or, if the Buyer's Representatives have then submitted the Transfer for registration, to apply immediately to withdraw the Transfer from the LTO and, upon receipt, to return it to the City's Legal Director.

The Seller and Buyer instruct the City's Legal Director and Buyer's Representatives respectively to otherwise conduct the closing according to the customary practices of reputable lawyers having

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experience in such matters, except that the Buyer's Representatives will not require the City's Legal Director to provide any undertaking.

6.3 **Tender.** The Buyer may tender documents or money upon the Seller or the City's Legal Director, and the Seller may tender documents on the Buyer or the Buyer's Representatives.

6.4 **Payments.** The Buyer will, or will cause the Buyer's Representatives to, pay all money owing to the Seller under this Contract including the Deposit by bank draft drawn on a Canadian chartered bank or on a trust company or credit union acceptable to the Seller.

SECTION 7 GENERAL PROVISIONS

7.1 **Survival.** All representations, agreements, and indemnities in this Contract will survive closing, registration of the Transfer, and payment of the adjusted Purchase Price.

7.2 **Assignment.** The Buyer will not assign all or any of its rights or obligations under this Contract except to a corporate entity related to the Buyer.

7.3 **Notice.** Any notice, approval, consent, request, confirmation, or demand required or permitted under this Contract must be in writing, and the sender must deliver it by prepaid registered mail from any post office in British Columbia, by fax or by personal service addressed to the Seller as follows:

City of Vancouver
320 - 507 West Broadway
Vancouver, British Columbia V5Z 0B4
Attention: Director of Real Estate Services

with a copy to:

City of Vancouver
453 West 12th Avenue
Vancouver, British Columbia V5Y 1V4
Fax: (604) 873-7445

Attention: Director of Legal Services

or to the Buyer as follows:

Cressey Projects Corporation
Suite 800- 925 West Georgia Street
Vancouver BC V6C 3L2

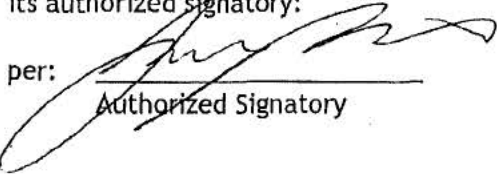
Attention: Mr. Jason Turcotte, Vice-President, Development

or to such other address or fax number in the Province of British Columbia of which either party may notify the other according to the requirements of this section 7.2. Service will be deemed complete, if made by registered mail 72 hours after the date and hour of mailing; if made by faxed transmission on the first business day after the date of transmission; and if made by personal service upon the effecting of such service.

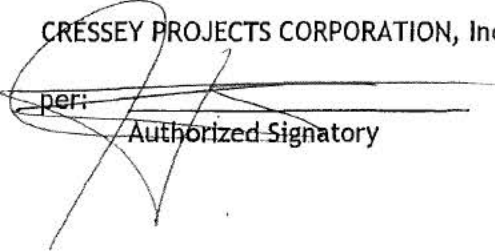
7.4 Effect of Contract. This Contract will ensure to the benefit of and bind the Seller and Buyer and their respective heirs, executors, administrators, successors, and permitted assigns.

TO EVIDENCE THIS CONTRACT the Seller and Buyer have signed it as of the Effective Date.

City of Vancouver by
its authorized signatory:

per: 
Authorized Signatory

CRESSEY PROJECTS CORPORATION, Incorporation Number 0495694 by its authorized signatories:

per: 
Authorized Signatory

Witness name: _____

Address: _____

Occupation: _____

(as to both signatures)