

**DELEGATED APPROVAL FORM
CHIEF CORPORATE OFFICER
DIRECTOR OF REAL ESTATE SERVICES**

**TRACKING NO.: 2016-235
WITH CONFIDENTIAL ATTACHMENT**

- Approved pursuant to the Delegated Authority contained in Executive Committee Item EX43.7 entitled "Delegation of Authority in Certain Real Estate Matters" adopted by City Council on May 11 and 12, 2010 (City Council confirmatory By-law No. 532-2010, enacted on May 12, 2010), as amended by GM24.9 entitled "Minor Amendments to Delegation of Authority in Certain Real Estate Matters" adopted by City Council on October 8, 9, 10 and 11, 2013 (City Council confirmatory By-Law No. 1234-2013 enacted October 11, 2013), as amended by DAF 2013-307 and DAF 2014-087.
- Approved pursuant to the Delegated Authority contained in Executive Committee Item EX33.44 entitled "Union Station Revitalization Implementation and Head Lessee Selection" adopted by City Council on August 5 and 6, 2009. City Council confirmatory By-law No. 749-2009, enacted on August 6, 2009.

Prepared By:	Vinette Prescott-Brown	Division:	Real Estate Services
Date Prepared:	October 26, 2016	Phone No.:	416-392-7138

Purpose	To seek approval for a full and final settlement with Genevive Antonipillai (the "Owner"), and Mervin Antonipillai operating as M & M Auto Sales (collectively, the "Claimants"), including the transfer and interim licence of portions of 4068 Sheppard Avenue East (the "City Property") as set out below, of all claims related to the expropriation of fee simple and temporary easement interests in parts of 4066 Sheppard Avenue East (the "Owner's Property") for the Agincourt Grade Separation Project (the "Project"), and to seek approval for the related sale of a portion of the City Property to the Owner.
Property	Expropriated Property: Portion of 4066 Sheppard Avenue East, designated as Part 1 (temporary easement) and 2 (fee simple) on Expropriation Plan No. AT2533329 City Property: Portion of 4068 Sheppard Avenue East, designated as Parts 1 and 2 on draft Reference Plan Job Number 2013-0206 (the "Draft Plan").
Actions	<ol style="list-style-type: none"> Authority be granted to enter into a Settlement Agreement with the Claimants in respect of claims related to the expropriation of fee simple and temporary easement interests in the Owner's Property by the City, substantially on the terms outlined herein, and in accordance with the Settlement Agreement to: <ol style="list-style-type: none"> transfer the lands designated as Part 2 on the Draft Plan (the "Part 2 Lands") to the Owner; licence the portion of the City Property identified as Part 1 on the Draft Plan (the "Part 1 Lands") and the Part 2 Lands to the Claimants for nominal consideration on an interim basis (the "Licence"); and pay the amount set out in the Confidential Attachment. The Chief Corporate Officer, or designate, administer and manage the Licence including the provision of any consents, approvals, waivers, notices and notices of termination, provided that the Chief Corporate Officer may, at any time, refer consideration of such matters to City Council for its determination and direction. Authority be granted to accept the Owner's offer to purchase the Part 1 Lands for \$160,000.00, substantially on the terms outlined below, and such other or amended terms as may be satisfactory to the Chief Corporate Officer, and in a form satisfactory to the City Solicitor. The City Solicitor be authorized to complete the transactions on behalf of the City, including paying any necessary expenses, amending the closing, due diligence and other dates, and amending and waiving terms and conditions, on such terms as she considers reasonable. The City pay the Claimants' reasonable legal fees and disbursements incurred in connection with the expropriation and the transaction, including HST, if applicable. The Confidential Attachment remain confidential until there has been a final determination of all property transactions and claims for compensation related to the Project. The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.
Financial Impact	Revenue in the amount of \$160,000.00 (less the payment set out in the Confidential Attachment, closing costs, and reasonable legal fees), would be generated from the sale of part of the City Property. The Province of Ontario, through Metrolinx, funded 100% of the costs to acquire the City Property. Accordingly, this revenue should be directed to the City of Toronto Internal Order No. 99000055 for Metrolinx funded initiatives. The Deputy City Manager & Chief Financial Officer has reviewed this DAF and agrees with the financial impact information.
Comments	See page 4.
Terms	See page 4 and Confidential Attachment 1.

Property Details	Ward:	39—Scarborough-Agincourt
	Assessment Roll No.:	1901-11-1-210-00500
	Approximate Size:	Irregular
	Approximate Area:	Part 1 – 248.4 m ² ± (2,673.76 ft ² ±); Part 2 – 30 m ² ± (322.92 ft ² ±)
	Other Information:	

A.	Director of Real Estate Services has approval authority for:	Chief Corporate Officer 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 ABCDs:</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 \$1 Million.</p> <p><input type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$1 Million.</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 \$1 Million.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$1 Million.</p> <p>Delegated to a more senior position.</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 three (3) months, including licences for environmental assessments and/or testing, etc.</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 road, 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 may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$500,000).</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/Cautions;</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>	<p><input type="checkbox"/> Where total compensation does not exceed \$3 Million.</p> <p><input checked="" type="checkbox"/> Statutory offers, agreements and settlements where total compensation does not cumulatively exceed \$3 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><input type="checkbox"/> Transfer of Operational Management to ABCDs.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$3 Million.</p> <p><input checked="" type="checkbox"/> Where total compensation does not exceed \$3 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 \$3 Million;</p> <p><input checked="" 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><input type="checkbox"/> Where total compensation (including options/renewals) does not exceed \$3 Million.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$3 Million.</p> <p>Delegated to a less senior position.</p> <p><input type="checkbox"/> Where total compensation does not exceed \$3 Million.</p> <p><input type="checkbox"/> Amendment must not be materially inconsistent with original decision (and may include increase not to exceed the amount of the original decision by the lesser of 10 per cent and \$1 Million).</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/Cautions;</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. Chief Corporate Officer and Director of Real Estate Services each has signing authority on behalf of the City for:

- 1. Agreements of Purchase and Sale and all implementing documentation for purchases, sales and land exchanges not delegated to staff for approval.
- 2. Expropriation Applications and Notices following Council approval of expropriation.
- 3. Documents required to implement the delegated approval exercised by him.

Chief Corporate Officer also has approval authority for:

Leases/licences/permits at Union Station during the Revitalization Period, if the rent/fee is at market value.

Consultation with Councillor(s)											
Councillor:	Jim Karygiannis					Councillor:					
Contact Name:	Councillor Karygiannis					Contact Name:					
Contacted by:	X	Phone	X	E-Mail		Memo		Other			
Comments:	Concurs					Comments:					
Consultation with ABCDs											
Division:	Financial Plannig					Division:					
Contact Name:	Filisha Mohammed					Contact Name:					
Comments:	Concurs with financial impact statement					Comments:					
Legal Division Contact											
Contact Name:	Charlene Farrugia										
DAF Tracking No.: 2016-235					Date		Signature				
Recommended by: Tim Park, Manager					Oct 26 2016		Signed By: Tim Park				
<input checked="" type="checkbox"/>	Recommended		Director of Real Estate Services		Nov 2 2016		Signed By: Joe Casali				
<input type="checkbox"/>	Approved by:		Joe Casali								
<input checked="" type="checkbox"/>	Approved by:		Chief Corporate Officer		Nov 4 2016		Signed By: Josie Scioli				
			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.
- (b) Where approving power has been delegated to staff, the Chief Corporate Officer, in consultation with the 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 is available from alternative sources].
- (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.
- (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 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, 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.
- (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, 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) This delegation does not affect sales, acquisitions and leases over which the Affordable Housing Committee has responsibility.
- (aa) 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.
- (bb) All residential leasing documents shall adhere to the *Residential Tenancies Act* and any successor legislation.
- (cc) Despite GC(n), Approving Authority in residential leasing matters is not limited to periods of less than twenty-one (21) years.

Comments

Genevive Antonipillai is the owner of 4066 Sheppard Avenue East, and her husband Mervin Antonipillai operates a used automotive retail business there as M & M Auto Sales. The widening of Sheppard Avenue East, construction of a barrier wall, and creation of a corner rounding was required at the front of the Owner's Property as part of the Agincourt Grade Separation Project (formerly Sheppard LRT Project).

In January 2010, City Council authorized the initiation of expropriation of a strip of land along the frontage of the Owner's Property and an ancillary temporary working easement. Notices of Application for Approval to Expropriate were published and served on the registered owners in accordance with the *Expropriations Act* (the "Act"). The Owner requested an inquiry as to whether the proposed expropriation was fair, sound and reasonably necessary to achieve the City's objectives as provided in section 7 of the Act.

Prior to the date set for the Hearing of Necessity, a meeting was held among City staff, the Owner and her solicitor to resolve or mitigate the concerns of the Owner with respect to the property takings and construction scheduling. It was agreed that City staff would consider entering into discussions regarding: (a) exchanging a portion of the City Property in exchange for the interests required at the Owner's Property; and (b) negotiating with the Owner for her purchase of additional lands at market value. As a result, the Owner withdrew the request for the Hearing of Necessity. The City authorized the expropriation of the required interests in August 2010. Expropriation Plan No. AT2533329 was registered on October 22, 2010, vesting title to Part 2 thereon and a temporary easement in Part 1 thereon in the City. An offer of compensation was sent to the Owner on January 19, 2011 pursuant to Section 25 of the Act. However, it was not accepted as the Owner was still interested in pursuing the land exchange and purchase.

The property at 4068 Sheppard Avenue East was expropriated by the City as part as the Agincourt Grade Separation Project. A portion of the property now forms part of the driveway entrance into the Agincourt Station GO Station parking lot, leaving an irregularly shaped remnant parcel comprised of the Part 1 Lands and the Part 2 Lands. The remnant parcel is not accessible from Sheppard Avenue East or from the GO parking lot because it is elevated several feet above street level and separated by a retaining wall. This parcel is landlocked and has limited commercial prospect beyond use by the Claimants.

Work on the Agincourt Grade Separation is now complete and the Claimants have submitted their claims. In exchange for a full and final release of all claims, the Claimants are requesting:

- The Part 2 Lands be transferred to the Owner by the City as compensation for the fee simple taking;
- The City sell the Part 1 Lands to the Owner at the appraised value of \$160,000.00;
- The City allow the Claimants to occupy the Part 1 Lands and Part 2 Lands for nominal consideration until they are conveyed to the Owner;
- The City compensate the Claimants in the amount set out in the Confidential Attachment, as compensation for business losses and disturbance damages; and
- Payment of the Owners' reasonable legal fees and disbursements, including HST, if applicable.

An independent appraisal report of the Part 2 Lands, prepared by Altus Group, estimates the market value of the lands as \$160,000.00 based on its contributory value to the Owner's Property. The Part 1 Lands are comparable in size and value to the fee simple lands expropriated from the Owner's Property. The City's business loss valuator, Dyson and Associates, has reviewed documentation provided by the Claimants and has confirmed that the payment set out in Confidential Attachment 1 is fair and reasonable.

Pursuant to report CC27.6, entitled "Metrolinx-City of Toronto-Toronto Transit Commission Master Agreement for Light Rail Transit Projects," adopted by City Council at its meeting on October 30, 31 and November 1, 2012, City Council exempted from the requirements of the City of Toronto Municipal Code, Chapter 213, Sale of Real Property and policies generally applicable to the disposal of City lands those lands determined by the Chief Corporate Officer to be required for the implementation of the Transit Projects, including the Agincourt Grade Separation Project. City Council also authorized, as approving authority under the Act, the Chief Corporate Officer to dispose of such lands acquired by expropriation without giving the owner from whom the land was expropriated the first chance to repurchase the lands on the terms of the best offer received by the expropriating authority.

The full and final settlement proposed is fair and reasonable. Settling the claim as outlined above avoids the additional costs associated with formal proceedings in respect of the compensation owing to the Owner pursuant to the Act.

Major Terms

Licence

Use: Vehicular parking in connection with the automobile sales business operated on the Owner's Property

Term: To expire upon transfer of the City Property to the Owner or termination of the related Agreement of Purchase and Sale, expected to be 45 days or less (but in any event not to exceed 6 months)

Insurance: Commercial general liability insurance in an amount of Five Million Dollars (\$5,000,000.00) per occurrence

Release & Indemnity: Claimants to release and indemnify the City for any loss, damage or injury to any person or property

Offer to Purchase

Purchase Price: \$160,000.00 (plus HST, if applicable)

Deposit: \$16,000.00 (certified cheque/bank draft)

Closing Date: 30th day following expiry of the Due Diligence Period (Due Diligence Period is 15 days from acceptance and execution by the City)

Other: The Property is being sold "as is". Balance of the purchase price shall be due on closing by certified cheque or bank draft, subject to the usual adjustments



