



Report to: General Committee

Meeting Date: June 12<sup>th</sup>, 2018

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**SUBJECT:** York University in Markham – Declaration of Surplus Lands and Conveyance of Lands to York University  
**PREPARED BY:** Jacqueline Chan, Assistant City Solicitor

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**RECOMMENDATION:**

- 1) That the report titled “York University in Markham – Declaration of Surplus Lands and Conveyance of Lands to York University” be received;
- 2) That the lands described as Part of Lot 9, Concession 5, depicted as Parts 1, 2, 7, 8, 9, 10, 11, 12 and 13 on the draft Reference Plan attached as Attachment No. 1 City of Markham, being approximately 4.45 acres (the “**York Lands**”) be declared surplus;
- 3) That the York Lands be conveyed to York University pursuant to the terms and conditions of a Land Transfer Agreement to be entered into by York University and the City;
- 4) That a permanent easement over the lands legally described as Part of Lot 9, Concession 5, depicted as Parts 3, 4, 5, 6 and 14 on the draft Reference Plan attached as Attachment No. 2, City of Markham , being approximately 0.246 acres (the “**Easement**”) be conveyed to York University;
- 5) That the Chief Administrative Officer, and his successors, be authorized to execute any future documents and agreements required to preserve or exercise the City’s option to purchase all or part of the York Lands (with or without buildings) as set out in this report, including, without limitation, executing any new option to purchase agreements, provided the form and content of such documents and agreements are satisfactory to the Chief Administrative Officer and the City Solicitor;
- 6) That Staff be authorized and directed to take the actions set out in this report; and
- 7) That the foregoing resolutions be reported out at the Council meeting on June 26<sup>th</sup>, 2018.

**EXECUTIVE SUMMARY:**

None.

**PURPOSE:**

To recommend that Council:

- a. declare the York Lands surplus to municipal purposes at the next Council meeting;
- b. authorize the conveyance of the York Lands to York University in accordance with the terms of a Land Transfer Agreement to be entered into by the City and York University;

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- c. authorize the conveyance of the Easement to York University; and
  - d. authorize the Chief Administrative Officer to execute any documents and agreements to preserve the City's option to purchase the York Lands.

### **BACKGROUND:**

On September 10<sup>th</sup>, 2014, Council approved the conveyance to York University, of part of the lands municipally known as 16 Main Street, up to five (5) acres in size, located in the area adjacent to the Pan-Am Centre, for nominal consideration, for the purpose of constructing a York University campus in Markham Centre, subject to terms and conditions.

York University submitted a proposal to construct a new campus in Markham in response to the Province of Ontario Ministry of Training, Colleges and Universities Major Capacity Expansion Call for Proposals ("**York's Proposal**"). York's Proposal was selected by the Province on May 20, 2015.

Staff were to report back to Council to recommend that the York Lands be declared surplus and conveyed to York University in the event that York's Proposal was selected under the Province of Ontario's Ministry of Training, Colleges and Universities' Major Capacity Expansion Call for Proposals and York University and York University receives satisfactory funding from the Province to construct the York campus on the Original York Lands.

York's proposal was selected by the Province and York has entered into a funding agreement with the Province. York has submitted an application for site plan approval for the first phase of the York University campus which was endorsed by Council on May 29<sup>th</sup>, 2018 ("**Phase One**"). York University and City staff have agreed on the final location and area of the lands to be conveyed from the City to York University, being the York Lands depicted as Parts 1, 2, 7, 8, 9, 10, 12 and 13, shaded in grey on Attachment No. 2. The City will also convey an Easement to York over Parts 3, 4, 5, 6 and 14 on a draft Reference Plan, shaded in grey on Attachment No. 3 (the "**Easement Lands**") to York University for a driveway access and servicing.

Staff from the Legal Department and the solicitors for York University are working on finalizing the Land Transfer Agreement which will contain the terms and conditions by which the City will convey the York Lands to York University. The Land Transfer Agreement will reflect the terms and conditions for the transfer of the lands to York University authorized by Council.

### **OPTIONS/ DISCUSSION:**

#### **1. Declaration of Surplus and conveyance to York University:**

In the September 2014 approval, Council had directed staff to report back to recommend that the York Lands be declared surplus and conveyed to York University for the construction of the new York University in Markham after the following milestones have been met:

- (a) York's Proposal is selected under the Province of Ontario's Ministry of Training, Colleges and Universities' Major Capacity Expansion Call for Proposals; and
- (b) York University receives satisfactory funding from the Province to construct the York campus in Markham. These conditions have now been satisfied.

The first milestone has been met: York's Proposal was selected by the Province on May 20, 2015.

With respect to the second milestone, on June 9, 2017, the Province announced that York University would receive \$127 million in funding to construct the York campus in Markham. The Province has since executed an agreement with York University setting out the funding terms (the "Provincial Funding Agreement"). The maximum amount that the Province will contribute towards the development of the York campus is \$127,300,000. York University will receive the funding in installments and has received the first installment in the amount of \$11,700,000.

Payments under the Provincial Funding Agreement are subject to the fulfillment of conditions. The payments are based upon the Project's construction progress and forecast expenditure demand. Payments are also subject to the Province receiving the necessary funds from the Ontario Legislature required to make the payments to York University. The Province reserved the right to terminate the Provincial Funding Agreement at any time. These latter conditions are typical to Provincial funding commitments.

Although the funding commitment from the Province is conditional and can be terminated by the Province, staff advise that this is a typical condition of funding agreements. The Province retained a similar right to cancel payments when they funded the Pan-Am Centre. To mitigate the risk of Phase One not being completed after the City conveys the York Lands to York University due to the cancellation of funding, staff have negotiated additional rights for the City to repurchase the lands for nominal consideration in the event that Phase One and subsequent phases, are not completed within set timelines (see Section 3 below).

Staff recommend that Council proceed to declare the lands surplus and convey them to York University in accordance with the terms of the Land Transfer Agreement.

Staff also recommend that notice of the proposed conveyance of the York Lands be published in the public agenda for the next Council meeting in accordance with the requirements in By-Law 178-96.

## 2. **Easements**

In order to facilitate the development and use of the York campus, the City will convey an easement to York University for the purpose of servicing and driveway access. The driveway will be 7 metres in width and will be constructed half on City owned lands and half on the York Campus lands to ensure that the York Lands and the Pan Am site have

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equal rights to access, use and maintain the driveway. An aerial photo depicting the proposed driveway is included as Attachment No. 4.

### 3. **Option to Purchase and Restrictive Covenants**

On Closing, York University will provide the City with an option to repurchase the York Lands, or the York Lands and the buildings situated thereon, in the event that York University: (a) intends to sell all or part of the premises to a third party; (b) ceases to use all or part of the premises as a university and/or uses ancillary to a university; (c) York has not commenced construction by December 31, 2018; (d) York fails to deliver documents required to renew the option agreement every 18 years. The purchase price the City would pay for the York Lands would be nominal. The purchase price for the York Buildings, if re-purchased, would be the fair market value of the York Buildings at the time the option to repurchase is exercised. In the event that the City purchased only the York Lands after the York Buildings are constructed, York would obtain a ground lease to permit it to continue operating its buildings thereon. The basic terms of the ground lease will be finalized prior to the conveyance of the York Lands to York University.

Staff have negotiated additional “triggers” for the City’s option to purchase. The City will have the option to re-purchase the York Lands (or part of the York Lands) for nominal consideration, if any of the following occur:

- (a) If Phase One of the York Campus is not completed and if active construction is not progressing by the 10<sup>th</sup> year anniversary of the transfer of the York Campus Lands to York University (the “Closing Date”).

This additional “trigger” is to address the risk of the provincial government terminating the funding in the Provincial Funding Agreement. A 10 year time frame was acceptable to York University as it provides time for two provincial election cycles to be completed and construction to commence again.

- (b) If Phase One of the York Campus is not completed by the 13<sup>th</sup> year anniversary of the Closing Date.
- (c) If construction of a \*University Building on the balance of the York Lands, labelled as “Option Lands” in the sketch attached as Attachment No. 5, has not been completed by the date that is the forty (40) year anniversary of the Closing Date, the City shall have the option to purchase the Option Lands for nominal consideration.

\*University Building means a building that will accommodate additional academic needs that arise following the Phase 1 construction, constructed in accordance with an approved site plan agreement.

In order to legally preserve the City’s option to purchase, the option to purchase agreement must be resigned and re-registered on title every 21 years. The Land Transfer Agreement provides for this to be completed every 18 years as a precaution. Staff recommend that authority be delegated to the Chief Administrative Officer to sign

subsequent option to purchase agreements and any other required documents to preserve the City's option to purchase.

**FINANCIAL CONSIDERATIONS**

The conveyance of lands to York University are for nominal consideration. York is responsible for the cost of preparation of reference plans, and other closing costs.

**HUMAN RESOURCES CONSIDERATIONS**

None.

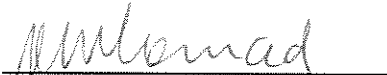
**ALIGNMENT WITH STRATEGIC PRIORITIES:**

This project is in line with the City's strategic focus of Growth Management, Transportation and Transit, Markham 2020 and Diversity.

**BUSINESS UNITS CONSULTED AND AFFECTED:**

The following business units were consulted: Planning and Urban Design, Finance, Engineering and Recreation.

**RECOMMENDED BY:**



Catherine Conrad, City Solicitor and  
Acting Director of Human Resources

**ATTACHMENTS:**

- Attachment No. 1: Draft Reference Plan
- Attachment No. 2: Draft Reference Plan depicting the York Lands
- Attachment No. 3: Draft Reference Plan depicting the Easements to York University
- Attachment No. 4: Aerial Photo showing the shared driveway
- Attachment No. 5: Sketch showing Option Lands