

TO:	CHAIR AND MEMBERS CORPORATE SERVICES COMMITTEE MEETING MAY 29, 2018
FROM:	ANNA LISA BARBON MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	SALE OF CITY OWNED PROPERTY TENDER NO. RFT18-44 OXFORD STREET EAST

RECOMMENDATION

That, on the recommendation of the Managing Director, Corporate Services and City Treasurer, Chief Financial Officer, on the advice of the Manager of Realty Services, the attached proposed by-law (Appendix "A") **BE INTRODUCED** at the Municipal Council meeting to be held on June 12, 2018 to authorize and approve an Agreement of Purchase and Sale (Schedule "A" to the by-law) with respect to the sale, by tender process, of the City-owned surplus property located on south side of Oxford Street East, between 1795 and 1845 Oxford Street East, further described as Part of Lot 5, Concession 1, Geographic Township of London, designated as Part 12, Plan 33R-10363, to Flatout Flooring Inc. for the sum of \$257,420.00.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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Asset Review: Class A – Vacant Land and Buildings, Corporate Services Committee – May 23, 2017

Asset Review: Sale of Major Assets Policy and Future Asset Review Timelines, Corporate Services Committee, March 7, 2017

Asset Review: London Hydro Inc. – Discussion Paper, Strategic Priorities and Policy Committee, February 13, 2017

Review of Corporate Assets: Initial Scoping Report, Corporate Services Committee, December 13, 2016

Capital Assets and Revenue Alternatives, Committee of the Whole, November 8, 2011

Capital Assets and Revenue Alternatives – Discussion Paper, Committee of the Whole, June 21, 2011

BACKGROUND

At its meeting held on May 30, 2017 Municipal Council resolved:

That, on the recommendation of the City Manager the following actions be taken with respect to an asset review of Class A – vacant land and buildings:

d) based on the results of the asset review, the following City-owned properties BE DECLARED SURPLUS to the needs of the City (see maps included in Appendix 'B' to the staff report dated May 23, 2017):

- i) a portion of 535 Pinetree Drive;*
- ii) Roll # 030290038000000 Oxford Street East;*
- iii) 92 Clemens Street;*
- iv) Roll # 030750205990000 Huron Street East;*
- v) 748 Classic Drive;*
- vi) 116 Emery Street West; and,*
- vii) 130 Southdale Road West.*

The property Oxford Street East is legally described as Part of Lot 5, Concession 1, Geographic Township of London, designated as Part 12, Plan 33R-10363, in the City of London, County of Middlesex.

The property dimensions are approximately 161.5 feet x 727 feet and approximates 2.49 acres of vacant land which is generally flat in topography.

The property is located on the south side of Oxford Street East, between 1795 and 1845 Oxford Street East.

A Location Map is attached as Appendix "B, for the Committee's information.

DISCUSSION

The subject site Roll # 030290038000000 Oxford Street East was held out for sale via public tender through the City's Purchasing and Supply department in accordance with the City of London's Sale and Other Disposition of Lands Policy.

The tender, RFT18-44 was published on March 28, 2018 and closed on April 30, 2018.

There were two submissions of an Agreement of Purchase and Sale associated with the tender for this property.

The highest bid was awarded to the successful bidder subject to Council approval.

Agreement Details

The Agreement of Purchase and Sale is for a consideration of \$257,420.00 with a 10% bid deposit having been received. The bid exceeds the reserve price which was established by an internal appraisal.

The agreement is irrevocable until June 29, 2018 in order to be considered by Council.

Completion date is September 24, 2018 subject to due diligence provisions in favor of the Purchaser.

Schedule B to the Agreement of Purchase and Sale provides for following elements:

- Insurance to be maintained by the Vendor until close
- Soil, Geotechnical, and Environmental Tests to be carried out by the Purchaser for a period of 60 days from acceptance, and all such document in the possession of the City will be shared with the successful proponent.
- Environmental Clause. Outside of the due diligence provision afforded the Purchaser, the property is being purchased on an AS IS basis
- Purchaser agrees to prepare a reference plan where required prior to closing

Recommendation

The Agreement of Purchase and Sale associated with the successful proponents bid submission exceeds the reserve and fulfills the mandate of the Corporation of the City of London to sell the property. It is therefore recommended that the agreement as submitted is approved.

PREPARED BY:	SUBMITTED BY:
BRYAN BAAR MANAGER, REALTY OPERATIONS	BILL WARNER MANAGER OF REALTY SERVICES
RECOMMENDED BY:	
ANNA LISA BARBON MANAGING DIRECTOR, CORPORATE SERVICES AND CITY TREASURER, CHIEF FINANCIAL OFFICER	

May 14, 2018
Attach.

File No.P-2338 (1)

cc: John Freeman, Manager, Purchasing and Supply
Peter Kokkoros, Deputy Chief Building Official, DCS
David G. Munteer, Solicitor

APPENDIX "A"

Bill No.

By-law No.

A by-law to authorize and approve an Agreement of Purchase and Sale between The Corporation of the City of London and Flatout Flooring Inc., for the acquisition of the property legally described as Part of Lot 5, Concession 1, Geographic Township of London, designated as Part 12, Plan 33R-10363, in the City of London, County of Middlesex, and to authorize the Mayor and the City Clerk to execute the Agreement.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to enter into an Agreement of Purchase and Sale with Flatout Flooring Inc. (the "Agreement");

AND WHEREAS it is appropriate to authorize the Mayor and the City Clerk to execute the Agreement on behalf of the City;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "A" to this by-law, being an Agreement of Purchase and Sale between the City and Flatout Flooring Inc. is hereby authorized and approved.
2. The Mayor and the City Clerk are hereby authorized to execute the Agreement authorized and approved under Section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council on

Matt Brown
Mayor

Catharine Saunders
City Clerk

First Reading -
Second Reading -
Third Reading -

SCHEDULE "A"
AGREEMENT OF PURCHASE AND SALE

AGREEMENT OF PURCHASE AND SALE

VENDOR: THE CORPORATION OF THE CITY OF LONDON

PURCHASER: FLATOUT FLOORING INC

REAL PROPERTY:

Address 0 Oxford Street East, London, ON

Location South side of Oxford Street East, between 1795 and 1845 Oxford Street East

Measurements Approximately 161.5' x 727' feet west side; 2.49 acres

Legal Description: Part of Lot 5, Concession 1, Geographic Township of London, designated as Part 12 on Plan 33R-10363, in the City of London, County of Middlesex, as shown on Schedule "A" (the "Property").

a) **OFFER TO PURCHASE:** The Purchaser agrees to purchase the Property from the Vendor in accordance with the terms and conditions as set out in this Agreement.

b) **SALE PRICE:** The purchase price shall be Two hundred fifty seven thousand four hundred twenty DOLLARS CDN
\$257,420.00

payable as follows:

c) a deposit of 10% Twenty five thousand seven hundred forty two DOLLARS CDN
\$25,742.00

In cash or cheque on the date hereof as a deposit; and

the balance of the sale price, subject to adjustments, in cash or by cheque on completion of this Agreement.

d) **ADJUSTMENTS:** Any unearned fire insurance premiums, rents, mortgage interest, realty taxes including local improvements rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to the Purchaser.

e) **SCHEDULE(S):** The following Schedule(s) form(s) part of this Agreement:

Schedule "A" Description of the Property
Schedule "B" Additional Terms and Conditions

f) **IRREVOCABILITY:** This Offer shall be irrevocable by the Vendor until considered by Council of the Corporation of the City of London at a meeting to be held no later than June 29, 2018, after which date, if not accepted, this Offer shall be null and void and the deposit shall be returned to the Purchaser in full without interest or deduction.

g) **TITLE SEARCH:** The Purchaser shall be allowed until 4:30p.m. September 24, 2018, to examine the title to the Property and at its own expense and to satisfy itself that there are no outstanding work orders or deficiency notices affecting the Property, that its present use may be lawfully continued and that the principal building may be insured against risk of fire.

h) **COMPLETION DATE:** This Agreement shall be completed by no later than 4:30p.m. September 28, 2018. Upon completion, vacant possession of the Property shall be given to the Purchaser unless otherwise provided for in this Agreement.

i) **NOTICES:** Any notice relating to or provided for in this Agreement shall be in writing.

j) **HST:** If this transaction is subject to Harmonized Sales Tax (HST) then such HST shall be in addition to and not included in the sale price, and HST shall be collected and remitted in accordance with applicable legislation. If this transaction is not subject to HST, the Vendor agrees to provide, on or before completion, to the Purchaser's solicitor, a certificate in a form satisfactory to the Purchaser's solicitor certifying that the transaction is not subject to HST.

k) **FUTURE USE:** Vendor and the Purchaser agree that there is no representation or warranty of any kind that the future intended use of the Property by the Purchaser is or will be lawful except as may be specifically provided for in this Agreement.

l) **TITLE:** Provided that the title to the Property is good and free from all encumbrances. If within the specified times referred to in paragraph g) any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to the Vendor and which Vendor is unable or unwilling to remove, remedy or satisfy and which the Purchaser will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and any deposit paid shall be returned without interest or deduction and Vendor shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, the Purchaser shall be conclusively deemed to have accepted Vendor's title to the Property.

m) **DOCUMENTS AND DISCHARGE:** The Purchaser shall not call for the production of any title deed, abstract, survey or other evidence of title to the Property except such as are in the possession or control of Vendor. If requested by the Purchaser, Vendor will deliver any sketch or survey of the Property within Vendor's control to the Purchaser as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by the Purchaser on completion, is not available in registerable form on completion, the Purchaser agrees to accept Vendor's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registerable form and to register same on title within a reasonable period of time after completion, provided that on or before completion Vendor shall provide to the Purchaser a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, together with a direction executed by Vendor directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

- n) **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registerable form at the expense of the Vendor.
- o) **RESIDENCY:** The Purchaser shall be credited towards the Purchase Price with the amount, if any, necessary for the Purchaser to pay to the Minister of National Revenue to satisfy the Purchaser's liability in respect of tax payable by Vendor under the non-resident provisions of the Income Tax Act by reason of this sale. The Purchaser shall not claim such credit if Vendor delivers on completion the prescribed certificate or a statutory declaration that Vendor is not a non-resident of Canada.
- p) **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Vendor and the Purchaser or their respective lawyers who are hereby specifically authorized in that regard.
- q) **TENDER:** Any tender of documents or money hereunder may be made upon Vendor or the Purchaser or their respective solicitors on the day set for completion. Money may be tendered by bank draft or cheque by a Chartered Bank, Trust Company, Province of Ontario Savings Office, Credit Union or Caisse Populaire.
- r) **FAMILY LAW ACT:** Vendor warrants that spousal consent is not necessary to this transaction under the provisions of the *Family Law Act*, R.S.O. 1990 unless Vendor's spouse has executed the consent provided.
- s) **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if the subdivision control provisions of the Planning Act are complied with.
- t) **CLOSING ARRANGEMENTS:** Where each of the Vendor and Purchaser retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. , Chapter L4, and any amendments thereto, the Vendor and Purchaser acknowledge and agree that the delivery of documents and the release thereof to the Vendor and Purchaser may, at the lawyer's discretion: (a) not occur contemporaneously with the registration of the Transfer/Deed (and other registerable documentation) and (b) be subject to conditions whereby the lawyer receiving documents and/or money will be required to hold them in trust and not release them except in accordance with the terms of a written agreement between the lawyers.
- u) **AGREEMENT IN WRITING:** This Agreement, including any Schedule attached, shall constitute the entire Agreement between the Purchaser and Vendor. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. This Agreement shall be read with all changes of gender or number required by the context.
- v) **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

The Corporation of the City of London hereby accepts the above Agreement of Purchase and Sale and agrees to carry out the same on the terms and conditions herein contained.

IN WITNESS WHEREOF The Corporation of the City of London agrees to the above Agreement of Purchase and Sale and has hereunto caused to be affixed its Corporate Seal attested by the hands of its proper signing officers pursuant to the authority contained in By-law No. _____ of the Council of The Corporation of the City of London passed the

THE CORPORATION OF THE CITY OF LONDON

Matt Brown, Mayor

Catharine Saunders, City Clerk

GIVEN UNDER MY/OUR HAND AND SEAL, (OR, IN WITNESS WHEREOF THE VENDOR HERETO HAS HEREUNTO CAUSED TO BE AFFIXED ITS CORPORATE SEAL ATTESTED BY THE HANDS OF ITS PROPER SIGNING OFFICERS, as the case may be) this _____ day of _____,

SIGNED, SEALED AND DELIVERED
In the Presence of

Per: EVATON FLOORING INC
Name: THOMAS BUTCHER
Title: PRESIDENT / OWNER

I/We Have the Authority to Bind the Corporation

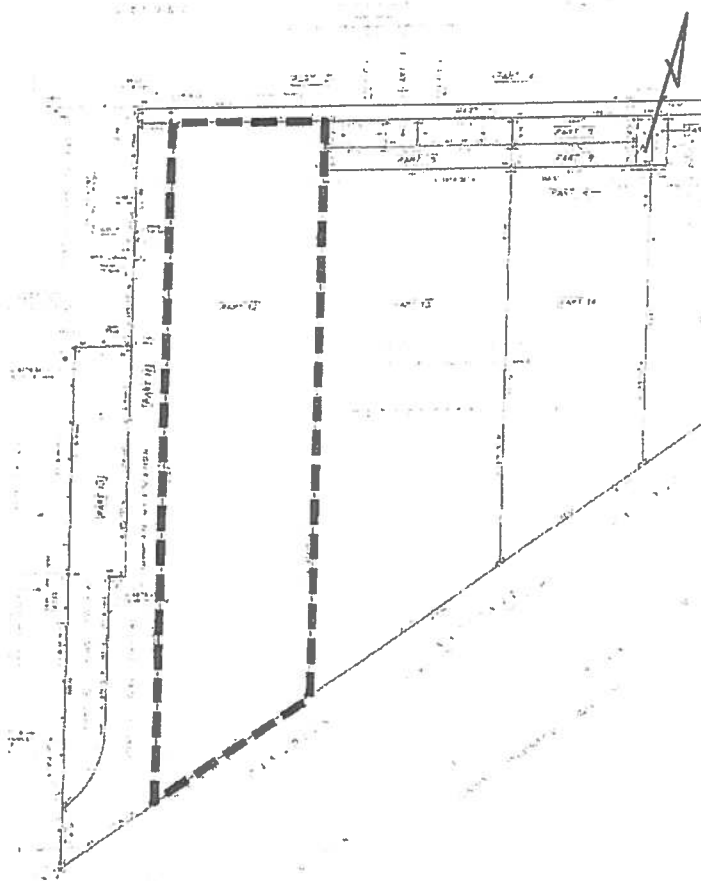


VENDOR'S LAWYER: David G. Mounteer, Solicitor, 519-861-2500 Ext. 4709 Fax: 519-861-5530

PURCHASER'S LAWYER: BILL MITCHELL, HARRISON PENSA LTD 519 679 9600



SCHEDULE "A"



[Handwritten signature]

SCHEDULE "B"

1. **INSURANCE:** All buildings on the Property and all other things being purchased shall be and remain until completion at the risk of the Vendor. Pending completion, Vendor shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, the Purchaser may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion.
2. **SOIL, GEOTECHNICAL AND ENVIRONMENTAL TESTS:** The Purchaser shall have a period of 60 days from the date of acceptance of this Agreement to satisfy itself in its sole and absolute discretion as to the soil and environmental condition of the Property. The Purchaser may enter on the Property and have soil and environmental tests conducted using qualified agents or servants. The Purchaser agrees that all such tests shall be conducted using reasonable care and that the Property shall be restored to a condition as close as reasonably possible to its condition prior to entry. The Purchaser agrees to indemnify and save harmless the Vendor from and against all claims, demands, costs, including reasonable legal costs, damages, expenses and liabilities whatsoever arising out of its entry on the Property and the conducting of such test.

If the results of the soil tests are not satisfactory to the Purchaser, it shall within the time limited deliver written notice to the effect to the Vendor and the Agreement shall be terminated and the deposit immediately returned to the Purchaser without interest or deduction; failing delivery of written notice, the condition shall be deemed to have been waived. This condition is inserted for the benefit of the Purchaser and may be waived by it at any time during the time limited period.
3. **ENVIRONMENTAL CLAUSE:** The Purchaser acknowledges that the Property is being purchased on an "as is" basis. The Purchaser acknowledges that the Vendor has not made, did not make and shall not be required to provide any representations or warranties of any kind with respect to whether the Property and processes and undertakings performed thereon have been and are in compliance with all applicable environmental laws, regulations and orders and whether the Property is suitable for any specific use including and without limitation to any construction or development. The Purchaser acknowledges and agrees that the Vendor shall not be liable for any damages of loss whatsoever arising out of or pursuant to any claims in respect to the foregoing.
4. **REFERENCE PLAN:** The Purchaser agrees to prepare and deposit on title, on or before closing and at its expense, a reference plan describing the Property, if required.



Appendix "B" – Location Map

