Minute No. 372
Report - Standing Policy Committee on Property and Development – May 10, 2011

Item No. 12 **Encroachment Agreement - Portion of Street Right of Way at the northeast corner of Bishop Grandin Boulevard and Waverley Street (St. Norbert Ward)**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That an Encroachment Agreement in favour of Richmond Six Ltd., to use a portion of the street right of way, as shown on Misc. Plan 10665/2, to maintain an advertising sign and display vehicles for sale, be approved in accordance with the Terms and Conditions set out in Schedule A.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report - Standing Policy Committee on Property and Development – May 10, 2011

DECISION MAKING HISTORY:

Moved by Councillor Browaty,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 18, 2011, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 10, 2011, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Proposed Encroachment Agreement to use a portion of street right of way at the North East corner of Bishop Grandin Blvd. and Waverley Street for the display of vehicles at 1700 Waverley Street - Richmond Six Ltd.**

Critical Path: **Standing Policy Committee on Property and Development, EPC, Council.**

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Thorgrimson	D. Joshi	n/a	P. Sheegl, Deputy CAO

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of Richmond Six Ltd., to use a portion of the street right of way, as shown on the attached Misc. Plan 10665/2, to maintain an advertising sign and display vehicles for sale, be approved in accordance with the Proposed Terms and Conditions set out in the attached Schedule A.

2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

Encroachment Bylaw 692/74, General Regulations, 4. (1) d, states:

"Where the encroachment is of an unusual or commercial nature that it be referred to the Director of Land and Development Services of the City for the purpose of negotiating a reasonable rental and making recommendation to the Chief Administrative Officer for subsequent referral to Council."

In this regard, the Planning, Property & Development Dept. has negotiated Terms and Conditions of an Encroachment Agreement, in favour of Richmond Six Ltd.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department of Planning, Property and Development has determined there are no general, policy, regulatory, environmental or human resource implications to leasing the lands shown on the attached Misc. Plan 10665/2.

HISTORY

The Subject Property has been leased to Richmond Six Ltd. since 2000; the previous agreement expired in August 2010. In April of 2010 Richmond Six Ltd. requested a new Encroachment Agreement with the City for the portion of street right of way, shown as "Encroachment Area" on the attached Misc. Plan 10665/2. The proposed encroachment agreement is for 5 years, with one 5 year renewal. The agreement is at market value, as the use is of a commercial nature. The agreement includes a cancellation clause.

The request was circulated to applicable City departments for consideration and comment. No objections were received, subject to the conditions as noted in Schedule A.

This report seeks the approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement **Date:** March 22, 2011

Project Name: **First Year of Program** **2011**

Proposed Encroachment Agreement to use a portion of street right of way at the North East corner of Bishop Grandin & Waverly Street at 1700 Waverly Street by Richmond Six Ltd

	2011	2012	2013	2014	2015
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	10,500	7,500	7,500	7,500	7,500
Net Cost/(Benefit)	$ (10,500)	$ (7,500)	$ (7,500)	$ (7,500)	$ (7,500)
Less: Existing Budget Amounts	(10,500)	(7,500)	(7,500)	(7,500)	(7,500)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2011 consist of the annual encroachment fee of $7,500, as well as the prorated amount of $2,500 for for September 1, 2010 commencement date (for September 1 to December 31), plus a one-time admin fee of $500. Revenues from 2012-2015 consist of the full year encroachment fee amount which is assumed to remain constant.

original signed by
Karen Ayotte
Assistant Controller

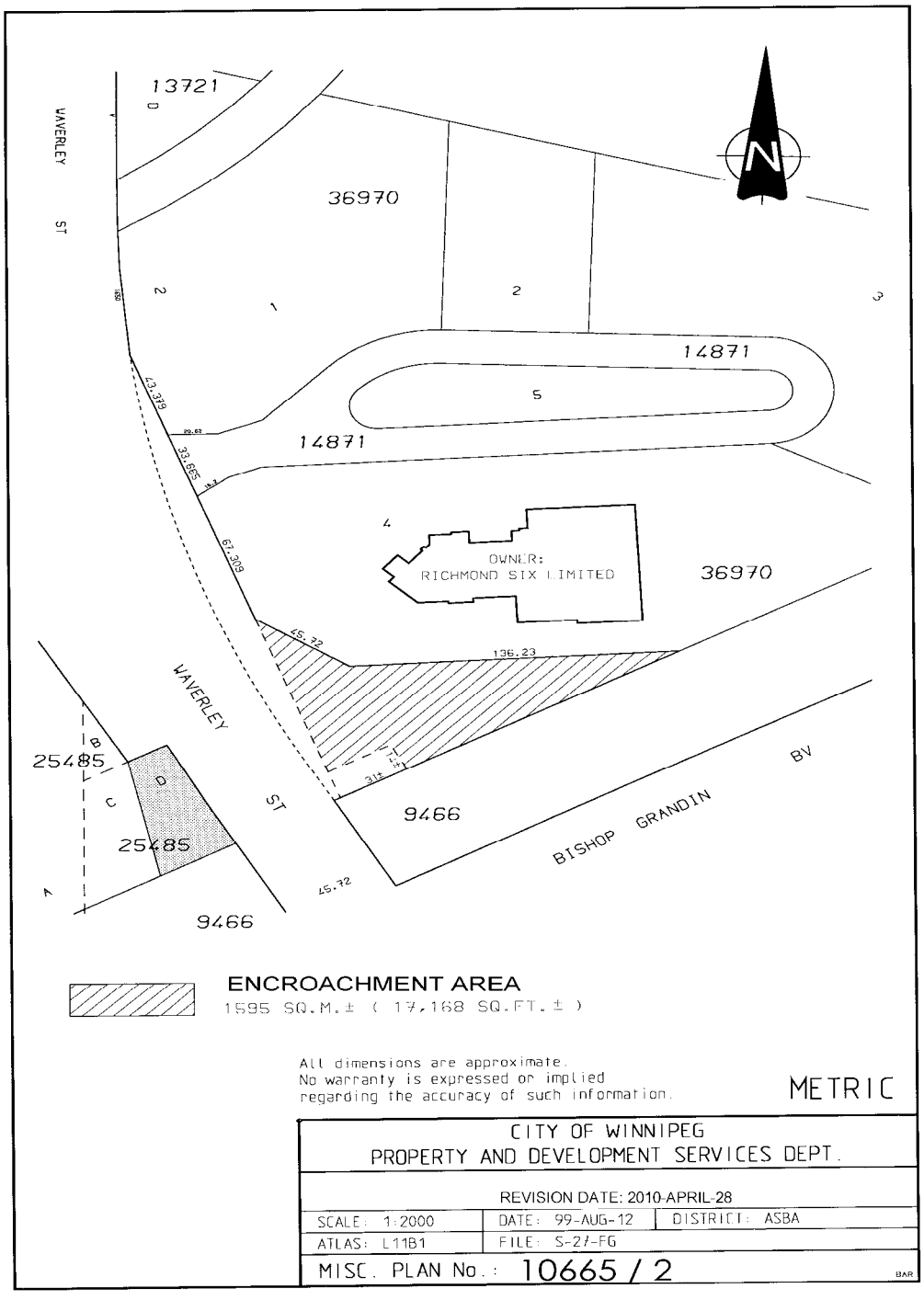
CONSULTATION

In preparing this report there was consultation with:

Legal Services Department, as to legal issues
Corporate Finance Department, Risk Management Division

SUBMITTED BY

Department: Planning, Property & Development Department
Division: Real Estate Division
Prepared by: Stacy Sinclair
Date: April 5, 2011
File No.: S/27/FG/ (V2)


13721
WAVERLEY ST
36970
14871
14871
OWNER:
RICHMOND SIX LIMITED
36970
43.379
33.665
67.309
45.72
136.23
WAVERLEY ST
25485
25485
9466
9466
BISHOP GRANDIN BV
45.72
ENCROACHMENT AREA
1595 SQ.M.± (17,168 SQ.FT.±)
All dimensions are approximate.
No warranty is expressed or implied
regarding the accuracy of such information.
METRIC
CITY OF WINNIPEG
PROPERTY AND DEVELOPMENT SERVICES DEPT.
REVISION DATE: 2010-APRIL-28
SCALE: 1:2000
DATE: 99-AUG-12
DISTRICT: ASBA
ATLAS: L11B1
FILE: S-27-FG
MISC. PLAN No.: 10665 / 2

Schedule "A"

Proposed Terms & Conditions for the Encroachment Agreement between the City of Winnipeg and Richmond Six Ltd.

(Shown as "Encroachment Area" on attached Misc. Plan 10665/2)

Landlord:	City of Winnipeg
Licensee:	Richmond Six Ltd.
Licensed Lands:	A portion of Waverly Street and Bishop Grandin Boulevard shown on the attached Misc. Plan 10665/2 identified as "Encroachment Area".
Area:	As shown in cross-hatch on the attached Misc. Plan 10665/2
Use:	Passenger vehicle and light duty truck display area, and for a three sided free standing sign.
Term:	Five (5) years commencing September 1, 2010.
Renewal:	One five (5) year option to renew, subject to the same terms and conditions, except for this renewal option, subject to a rental increase, to be based on market rates at the time the Licensee exercises its option to renew, which at no time shall be less than the previous rental rate. Licensee to notify Landlord of intent to renew, not less than six (6) months prior to expiry of term.
Rent:	$7,500 plus GST per annum.
Admin Fee:	A one time administration fee of $500.00 plus GST
Taxes:	Licensee responsible for all municipal taxes, school taxes, local improvements, license fees, business tax, etc. which may be charged in respect of the use and occupation of the Licensed Lands.
Cancellation:	Upon ninety (90) days written notice by either party.
Insurance:	To indemnify and keep indemnified the City from and against all claims for damages which arise out of the use of the Licensed Lands by the Licensee. To further safeguard the City, the Licensee shall purchase and keep in force, during the full term of the agreement, a Comprehensive General Liability Policy including but not limited to the following provisions: i) The City of Winnipeg to be added as an Additional Insured; ii) Policy to contain a Cross-Liability Clause; iii) Minimum limits of $2,000,000.00 inclusive. Deductibles shall be borne by the Licensee; The Licensee shall not cancel or cause any such policy or policies to lapse without minimum thirty (30) days prior written notice to the City of Winnipeg; The Licensee shall provide written notice to The City of Winnipeg of any material changes to their policies within thirty (30) days of the change taking effect; The Licensee shall file with the City a certificate of insurance in a form satisfactory to the City Solicitor; The City shall have the right to alter the limits and/or coverage as

reasonably required during the continuance of this agreement.

Conditions: The Licensee will not construct or permit the construction of any building or structure whatsoever on the Licensed Lands, nor make any excavation therein or improvement thereon, without the written authority of the City's Director of Planning, Property and Development.

The development and maintenance of the Licensed Lands will be performed at the sole cost, expense and effort of the Licensee, including, but not limited to, obtaining all permits required to develop, occupy and utilize the Licensed Lands for the intended use.

The Licensee will maintain at its own expense the Licensed Lands in a safe, clean and tidy condition to the satisfaction of the City.

In the event that the Licensed Lands require repair, the Licensee shall perform at its sole cost, expense and effort required repairs within thirty (30) days of written notice provided by the City.

The Licensee will pay all operating costs including hydro costs related to the use and occupancy of the Licensed Lands.

The Licensee takes the Licensed Lands on an "as is" basis and acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, condition or suitability of the Licensed Lands for any use or purpose, nor as to any environmental conditions which may exist.

The Licensee is to comply with all laws, by-laws and regulations of any federal, provincial or municipal authority, and shall obtain all necessary permits pertaining to the use and occupancy of the Licensed Lands.

The Licensee acknowledges that a zoning variance is required to establish the use of the Licensed Lands as defined herein, the conditions of which are outlined in Board of Adjustment Variance Order No. DAV 560/2001C, attached hereto as Schedule "B". The Licensee agrees to comply with the requirements and conditions of Board of Adjustment Variance Order No. DAV 560/2001/C for the duration of the Term and any subsequent renewals thereof.

The Licensee shall at its sole cost and expense ensure that all environmental contaminants are received, handled, used, stored, treated, shipped and disposed of in the manner required from time to time by applicable laws, by-laws, regulations, rules or requirements of all authorities having jurisdiction over the demised premises or the Licensee; and

Not at any time release into the environment, or deposit, discharge, place or dispose of, at, on or near the Land any dangerous goods as that term is defined in The Dangerous Goods Handling and Transportation Act, R.S.M.1987, c.D12, as amended, replaced or substituted from time to time.

The City shall have the right of access to the Licensed Lands at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or without equipment for any purpose whatsoever, including, but not limited to, those purposes related to viewing the state of repair, safety, protection, preservation or improvement of the Licensed Lands, and for doing any work to maintain, operate, repair, inspect or rehabilitate its existing water mains, sewer

lines and appurtenances in or near to the Licensed Lands, without being responsible for any damage occasioned thereby.

The City reserves the right for MTS Communications Inc. and Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Licensed Lands for maintenance and/or repair of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby.

The Licensee is not to assign or sub-let or part with possession of all or any part of the Licensed Lands without the Licensee first obtaining the prior written consent of the City. In such event, the City in its sole discretion may cancel this agreement and enter into a new agreement. Further the Licensee acknowledges and agrees that upon making an application for such consent by the City, the Licensee shall pay to the City a non-refundable administrative fee of two hundred and fifty dollars ($250.00) plus GST, or such amount as may from time to time be determined by the City in its sole discretion and acting reasonably.

In the event of the Licensee being in default of any Terms and Conditions contained herein, the Encroachment Agreement is subject to immediate cancellation by the City.

Upon termination or cancellation of the Encroachment Agreement the Licensee shall remove its property and improvements from the Licensed Lands and leave same in a condition satisfactory to the City. Should the Licensee default in so doing the City may remove the Licensee's property and improvements and restore the Licensed Lands at the sole risk and expense of the Licensee.

This proposal is subject to final approval by the City of Winnipeg's Council, or its delegated authority.

The Licensee shall enter into a formal agreement with the City embodying the foregoing Terms and Conditions and such other Terms and Conditions as the City Solicitor/Manager of Legal Services deems necessary and in a form satisfactory to the City Solicitor/Manager of Legal Services.

Richmond Six Ltd. hereby acknowledges and agrees to enter into an Encroachment Agreement with the City of Winnipeg for the use of the area identified as "Encroachment Area" on Misc. Plan 10665/2 attached in accordance with the Terms and Conditions as outlined herein on this Schedule "A".

Richmond Six Ltd.

Jan 20/11
Date

O:\Reports Directive\Real Estate\Leasing\Encroachment Agreement - S-27-FG V2, Richmond Six Ltd..doc

Schedule "A"

