Minute No. 520
Report - Standing Policy Committee on Property and Development – July 5, 2011

Item No. 10 **Encroachment Agreement - Use portion of Street Right-of-Way south of Bishop Grandin Boulevard between Dakota Street and St. Mary's Road - Public parking at St. Vital Centre – OPB Realty Inc.**

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 OPB Realty Inc., to use a portion of the street right of way, as shown on Misc. Plan 10695/14 for the purpose of public parking for St. Vital Centre, 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 – July 5, 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 July 13, 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 July 5, 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 south of Bishop Grandin Blvd., between Dakota Street and St. Mary's Road, for the purpose of public parking at St. Vital Centre – OPB Realty Inc.**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Thorgrimson	D. Joshi	Paul Olafson A/CFO	Alex Robinson Deputy CAO

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of OPB Realty Inc., to use a portion of the street right of way, as shown on the attached Misc. Plan 10695/14 for the purpose of public parking for St. Vital Centre, 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 By-law 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 Department has negotiated Terms and Conditions of an Encroachment Agreement, in favour of OPB Realty Inc.

IMPLICATIONS OF THE RECOMMENDATIONS

The Planning, Property and Development Department has determined there are no general, policy, regulatory, environmental or human resource implications to leasing the lands shown on the attached Misc. Plan 10695/14.

HISTORY

The Subject Property has been leased to OPB Realty Inc. since 2002; the current agreement will expire on August 31, 2011. In February of 2010 OPB Realty Inc. 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 10695/14. The proposed encroachment agreement is for 5 years, with three, 5 year renewal options. 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:** June 21, 2011

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

Proposed Encroachment Agreement to use a portion of street right of way south of Bishop Grandin Blvd., between Dakota Street and St. Mary's Road, for the purpose of public parking at St. Vital Centre – OPB Realty Inc.

	2011	2012	2013	2014	2015 to 2016
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	46,000	138,000	138,000	138,000	184,000
Net Cost/(Benefit)	$ (46,000)	$ (138,000)	$ (138,000)	$ (138,000)	$ (184,000)
Less: Existing Budget Amounts	(46,000)	(138,000)	(138,000)	(138,000)	(184,000)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Annual revenues consist of rent of $138,000/annum from Sept. 1/11 to Aug. 31/16. Amounts in 2011 and 2016 have been pro-rated to reflect this term.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Legal Services Department
Corporate Finance Department
Public Works Department

SUBMITTED BY

Department:	Planning, Property & Development Department
Division:	Real Estate Division
Prepared by:	Stacy Sinclair
Date:	June 22, 2011
File No.:	4408/81 (V5)

Schedule "A"

Proposed Terms & Conditions for the License and Encroachment Agreement between the City of Winnipeg and OPB Realty Inc.

Licensor:	City of Winnipeg
Licensee:	OPB Realty Inc.
Lands Affected:	A portion of Bishop Grandin Boulevard shown on the attached Misc. Plan 10695/14 identified as "Encroachment Area", hereinafter referred to as "Encroachment Lands".
Area:	4.79 acres +/-
Use:	The Encroachment Lands shall be used as a parking lot in conjunction with the adjoining shopping centre only and for no other purposes whatsoever.
Term:	Five (5) years commencing September 1, 2011.
Rent:	$138,000 plus GST per annum during the first five years of the Term, and subject to rental increase in each renewal period, such increase in rent to be based on market rates at the time, but not less than the previous rental rate. Annual payments to be received by September 1, of each year of the agreement.
Renewal:	Three (3) five (5) year options to renew, at a rental rate based on market rates at the time the Licensee exercises its option(s) to renew, which at no time shall be less than the previous period rental rate. Licensee to notify Licensor of its intent to renew not less than 12 months prior to expiry of term or each renewal.
Admin Fee:	A one time administration fee of $500.00 plus GST to be paid at the same time as the first annual rental payment.
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 Encroachment Lands.
Cancellation:	No cancellation by the Licensor during the first four (4) years of the first term. After completion of the first 4 years, upon Three Hundred and Sixty Five (365) days written notice by the Licensor, provided the Encroachment Lands are required by Public Works for public purposes. Upon Three Hundred and Sixty Five (365) days written notice by Licensee.
Insurance:	To indemnify and keep indemnified the City from and against all claims for damages which arise out of the use of the Encroachment 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

Schedule "A"

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 from time to time during the continuance of this agreement.

Conditions: Licensee not to erect or permit the erection of any building or other structure upon the Encroachment Lands, whether underground, surface and/or above ground, whether permanent or temporary, whether having a foundation or not, not to make any excavation therein nor place any fill thereon which has not been pre-approved of by the City, without having first obtained the prior written consent of the City's Director of Planning, Property and Development. Any removal of trees from the Encroachment Lands shall require the prior written approval of the forestry branch of the City.

Licensee 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 Encroachment Lands.

Licensee to maintain at its own expense the Encroachment Lands in a clean and tidy condition to the satisfaction of the City.

Licensee to pay all operating costs including hydro costs related thereto.

The City shall have the right of access to the Encroachment 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 to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Lands.

The Licensee not to assign or sub-let or part with possession of all or any part of the Encroachment Lands without the Licensee first obtaining the prior written consent of the City, such consent not to be unreasonably withheld. Any assignment not to relieve the Licensee of its obligations under the Agreement.

Upon its making application for such consent by the City the Licensee shall pay to the City a non-refundable administrative fee of Two Hundred and Fifty ($250.00) Dollars, plus applicable Goods and Services Tax, or such amount as may from time to time be determined by the City in its sole discretion acting reasonably.

In the event of the Licensee being in default of any terms and conditions contained herein, and such default is not remedied within ten (10) days of written notice to the Licensee by the City, the Agreement is subject to immediate cancellation by the City.

Upon termination or cancellation for cause or expiry of the Agreement, the Licensee shall remove its property (asphalt parking lot) and improvements from the Encroachment Lands, at its expense, and leave same in a condition satisfactory to the City. Should the Licensee default

Schedule "A"

in doing so, the City may remove the Licensee's property and improvements and restore the Encroachment Lands at the sole risk and expense of the Licensee.

During the term of the Agreement, the City shall include the parking stalls provided on the Encroachment Lands in the calculation of the overall parking ratio for the adjoining shopping centre.

In the event that the Agreement is terminated or cancelled by the Licensor for the purpose of establishing a Public Right of Way, the Licensee shall not be required to provide additional parking stalls for the existing adjoining shopping centre and the municipal parking ratio required to be maintained for the adjoining shopping centre shall be reduced by the number of parking stalls eliminated by the termination or cancellation of the Agreement. In the event the agreement is terminated by the adjoining shopping center, a variance would be required for the deficiency in parking requirements. This proposal is subject to final approval by the City of Winnipeg's Council, or its delegated authority.

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 form satisfactory to the City Solicitor/Manager of Legal Services.

OPB Realty Inc., 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 10695/14 attached in accordance with the terms and conditions as outlined herein on this Schedule "A".

OPB REALTY INC.,
Per:_____
ame:Title: **Brian Whibbs**
Vice President, Real Estate DATE: JUNE 7, 2011

Per:_____
Name:
Title:

I/~~we~~ have the authority to bind the corporation

Schedule "A"
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