**Agenda – Executive Policy Committee – November 9, 2016**

**Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 8, 2016**

Moved by Councillor

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than 96 hours preceding the committee meeting, be considered by Committee.

**Item No. 18** **Award of Due Diligence Agreement for the Exclusive Right to a Due Diligence Period and Preparation of a Proposal for the City-Owned Property located at 266 Graham Avenue, Winnipeg, Manitoba, Expression of Interest No. 340-2016**
**(Fort Rouge – East Fort Garry Ward)**

STANDING COMMITTEE RECOMMENDATION:

On November 8, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the City enter into, execute and deliver a Due Diligence Agreement with Shelter Canadian Properties Limited in accordance with the proposed terms and conditions attached as Schedule "C" and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

2. That authority be delegated to the Director of Planning, Property and Development to negotiate and approve the terms and conditions of the Due Diligence Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

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

**Agenda – Executive Policy Committee – November 9, 2016**

**Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 8, 2016**

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On November 8, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

# ADMINISTRATIVE REPORT

**Title:** Award of Due Diligence Agreement for the Exclusive Right to a Due Diligence Period and Preparation of a Proposal for the City-Owned Property located at 266 Graham Avenue, Winnipeg, Manitoba, Expression of Interest No. 340-2016

**Critical Path:** Standing Policy Committee on Property and Development, Heritage and Downtown Development – Executive Policy Committee – Council

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| B. Erickson | J. Kiernan | M. Ruta | D. McNeil |

## EXECUTIVE SUMMARY

Entering into a Due Diligence Agreement as a result of the Expression of Interest (EOI) #340-2016 for the Exclusive Right to a Due Diligence Period and Preparation of a Proposal for 266 Graham Avenue to Shelter Canadian Properties Limited will allow due diligence to commence, identify the costs associated with facility development and provide for a potential proposal for the completion of a development by Shelter Canadian Properties Limited.

## RECOMMENDATIONS

1. That the City enter into, execute and deliver a Due Diligence Agreement with Shelter Canadian Properties Limited in accordance with the proposed terms and conditions attached as Schedule “C” and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the “Ancillary Agreements”).

2. That authority be delegated to the Director of Planning, Property and Development to negotiate and approve the terms and conditions of the Due Diligence Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor / Director of Legal Services to protect the interests of the City.

3. 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

On March 8, 2016 the Standing Policy Committee on Property and Development, Heritage and Downtown Development recommended that the Winnipeg Public Service issue an Expression of Interest respecting the former Canada Post Tower located at 266 Graham Avenue, develop a recommendation to maximize the value of this City property and report to Council upon completion. Under the terms of Expression of Interest #340-2016 for an Exclusive Right to a Due Diligence Period and Preparation of a Proposal for 266 Graham Avenue, the terms of the Due Diligence Agreement, including the period of due diligence, are subject to Council approval.

## IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to entering into the Due Diligence Agreement.

Following the Due Diligence Period, the Public Service will report back with the specifics of any development proposal for 266 Graham Avenue by Shelter Canadian Properties Limited;

Upon completion of Due Diligence, the City will have the right to purchase any/all building studies performed by/contracted for by the Proponent at a price equivalent to the Proponent's cost thereof.

The City reserves the right to any or all EOI Submissions or subsequent Submission(s) from the successful Proponent.

## HISTORY/DISCUSSION

On March 8, 2016 the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in recommendations 3 and 4 of the Winnipeg Public Service:

- That the Winnipeg Public Service issue an Expression of Interest respecting the former Canada Post Tower located at 266 Graham Avenue, to solicit sale or third party leasing proposals; develop a recommendation to maximize the value of this City property and report to Council upon completion.

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

The City of Winnipeg issued Expression of Interest #340-2016 on the Materials Management website and in the Saturday, April 23rd, 2016 edition of the Winnipeg Free Press.
The Evaluation Committee considered each proposal, based on the respective criterion, as follows:

- Proponent's Background Information - 5 Points

- Development Concept - 45 Points
  (Including compliance with service delivery/

operating requirements of the WPS)

- Proponent's Financial Capacity - 25 Points

- Proponent's Experience - 25 Points

Total 100 POINTS

Six (6) proposals were received by the submission deadline (4:00 p.m. May 27, 2016) and included the following:

- One proposal included the WPS garage levels and additional WPS accommodations in their proposal to be leased back by the City, which did not fulfill the intent of the EOI;

- One proposal did not include the financial capacity component and therefore did not score well;

- One proposal represented a residential development concept which was not acceptable from the WPS perspective;

- All other proposals rated well. Upon completion of the evaluation Shelter Canadian Properties Limited was deemed to have submitted the best proposal based on the above evaluation criteria.

- In the opinion of the Department, Shelter Canadian Properties Limited has the skills and resources to satisfactorily complete the work.

The Planning, Property and Development Department advises that no asset assessment will be conducted until the Due Diligence Agreement and Ancillary Agreement, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services, are executed.

**FINANCIAL IMPACT**

## Financial Impact Statement

**Date:** October 13, 2016

## Project Name:

**Award of Expression of Interest for the Exclusive Right to a Due Diligence Period and Preparation of a Proposal for the City-Owned Property located at 266 Graham Avenue, Winnipeg, Manitoba Expression of Interest No. 340-2016**

**COMMENTS:**

Approval of the award will allow Shelter Canadian Properties Limited exclusivity for a period of time to conduct due diligence and, potentially, prepare a development proposal this facility. The City will continue to operate the facility during this due diligence period and pay normal operating expenses. No contract is implied or formed under, or arises from this EOI, and no legal obligations between parties has, or will be, pre-determined. As such, there are no financial implications associated with this report.

*"Original Signed By"*
Mike McGinn, CPA, CA
Manager of Finance

## CONSULTATION

Legal Services, as to legal issues
Corporate Finance, Materials Management Division

## OURWINNIPEG POLICY ALIGNMENT

**03-1C Places to Work and Learn Downtown**

**KEY DIRECTION**
Facilitate the expansion of employment and educational opportunities in the Downtown seeking to reinforce Downtown's role as a hub for business, for learning, for government and for commercial activity.

**Direction 1**
Promote Downtown as the Location of Choice for New Office Space Development for Both the Private and Public Sectors.

**Direction 3**
Promote Downtown Economic Development Through Retention, Recruitment, Incubation and Development Strategies.

## SUBMITTED BY

Department: Planning, Property, and Development
Division: Municipal Accommodations
Prepared by: Sandi Caputo, Leasing Officer
Date: October 18, 2016

O:\Reports Directive\Municipal Accommodations\Awards of Contract\2016\MA2016-186 Award of Due Diligence Agreement for the Exclusive Right to a Due Diligence Period and Preparation of a Proposal for the City-Owned Property located at 266 Graham Avenue 1.docx

**SCHEDULE "C"**
**Proposed Terms and Conditions for Due Diligence Agreement**

| | |
|---|---|
| Due Diligence Period: | 150 Days; |
| Access: | Proponent will be granted access to the Tower during the Due Diligence Period for the sole purpose of conducting due diligence;<br><br>266 Graham Avenue will be provided to the Proponent on an 'as is' basis;<br><br>The Proponent will keep and maintain 266 Graham Avenue in good condition in a standard acceptable to the Director of Planning, Property & Development;<br><br>The Proponent will be responsible to comply with all applicable laws and obtain all necessary permits to conduct due diligence, including compliance with environmental regulations.<br><br>The Proponent will ensure that any individual involved in the inspection of the building systems has passed a Level 2 Security Clearance as required by the Winnipeg Police Service.<br><br>The Proponent will not make any alterations to 266 Graham Avenue.<br><br>Upon completion of due diligence, the Proponent will leave the Tower in good repair and equal to the condition that existed prior to the Due Diligence Period; |
| Costs: | The City will pay all costs for the operation of the Tower; |
| Due Diligence: | The Proponent has the right to conduct any due diligence that it requires in order to submit a Development Proposal; |
| Option to Purchase: | The City will have the option to purchase all or part of the Due Diligence information conducted by the Proponent at the same price as the Proponent's costs to obtain the Due Diligence. The City shall have the sole and exclusive title to any purchased Due Diligence information. The City may disclose any such purchased Due Diligence information to any person, and may use any such purchased Due Diligence information for any purpose whatsoever; |
| Confidentiality: | The Proponent will keep all information obtained from the City, information obtained throughout the Due Diligence Period and the Due Diligence, confidential and will ensure that any of its directors, employees, officers, contractors, consultants, advisors, etc. are bound by the same confidentiality requirements as the Proponent. The City shall have the sole discretion, in accordance with applicable legislation, to determine what information is confidential and what information may be released to the public; |

| | |
|---|---|
| Development Proposal: | Within one hundred and eighty (180) days of the completion of the Due Diligence Period, the Proponent will submit a Development Proposal to the City containing: a proposal to maximize the value of the Subject Property; a financial feasibility analysis; compliance with service delivery/ operating requirements of the Winnipeg Police Service; compliance with applicable City policies, including: *OurWinnipeg;* City of Winnipeg's Universal Design Standards; Environment Standards; City of Winnipeg's Green Building Policy. |
| Insurance: | The Proponent will be required to obtain and maintain insurance as may be required by the City's Supervisor of Insurance, Risk Management Division; |
| Indemnity & Release: | The Proponent will release, indemnify and save the City harmless from and against any and all claims for damages or injuries, including death, which may arise from the Proponents access 266 Graham Avenue. This provision shall survive any termination, cancellation or expiration of the Due Diligence Agreement; |
| Formal Agreement: | The Proponent will enter into a formal agreement with the City embodying the foregoing terms and conditions in the City's Standard Form Agreement and such other terms and conditions as the City Solicitor/Director of Legal Services deems necessary. |

**All terms and conditions contained herein, are subject to the approval of Council, or its delegated authority, and are not binding until such time as that approval is obtained.**

I, ARNI THORSTEINSON, am duly authorized to act on behalf of the Proponent, hereby agree that the Proponent will enter into a formal agreement with the City of Winnipeg in accordance with the proposed terms and conditions as outlined herein.

Witness Signature

Colleen Hager
Witness Name (please print)

8600 Seven Evergreen Place
Winnipeg, Manitoba.
Witness Address (please print)

Signature

ARNI C. THORSTEINSON
Name (please print)

PRESIDENT
Position (please print)