



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Date: October 2, 2006
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RTS No.: 06294
VanRIMS No.: 13-1100-31
Meeting Date: October 31, 2006

TO: Vancouver City Council

FROM: General Manager of Engineering Services in consultation with the Director of Legal Services

SUBJECT: 1055 Canada Place - Vancouver Convention Centre Expansion Project
Proposed Construction onto City Street and City Property

RECOMMENDATION

- A. THAT, in connection with the expansion of the Vancouver Convention and Exhibition Centre on PID: 025-522-281 Parcel D and PID: 025-522-299 Parcel E, both of the Public Harbour of Burrard Inlet, New Westminster District, Plan BCP1698, and adjacent lands, and any encroachments on, over, or under city streets or statutory rights of way needed by Vancouver Convention Centre Expansion Project Ltd. in connection with such expansion, Council approve a standard form of encroachment agreement between the City and Vancouver Convention Centre Expansion Project Ltd. substantially on the terms and conditions of the agreement attached as Schedule A to the by-law attached as Appendix A to this report.
- B. THAT Council authorize the Director of Legal Services to bring forward for enactment a by-law substantially in the form attached as Appendix A.

COUNCIL POLICY

There is no Council policy directly related to this matter.

On June 22, 2004 Council approved the closure of portions of unnamed City street that lay within the design footprint of the Vancouver Convention Centre Expansion Project building as shown in the preliminary development permit application.

On June 13, 2006 Council rescinded the 2004 approval and approved the closure of a slightly larger portion of unnamed City street that lay within the design footprint of the building as shown in the complete development permit application.

PURPOSE

The purpose of this report is to seek Council authority for the City and Vancouver Convention Centre Expansion Project Ltd. (VCCEP) to enter into Encroachment Agreements, substantially on the terms and conditions of the agreement attached to the by-law attached as Appendix A. Encroachment Agreements will be required for any above and below grade encroachments appurtenant to the proposed building, to be built by VCCEP at 1055 Canada Place, that are in accordance with the approved development permit and approved by the City Engineer or as requested by VCCEP and approved by the City Engineer.

Council is also asked to direct the Director of Legal Services to bring forward for enactment a by-law substantially in the form as attached as Appendix A.

The by-law would establish the form of any future VCCEP Encroachment Agreements. With Council's approval of this by-law, the VCCEP Encroachment Agreement would vary from our typical form of encroachment agreement such it would not include an annual fee, it would not contain a provision for registering security and it would set the term of the encroachment for the life of the building and not subject to cancellation until such time as the City Engineer has deemed that the building is no longer operational.

BACKGROUND

The Encroachment By-Law requires payment of annual charges for certain encroachments on City streets and requires that in such cases the registered owner enter into an agreement setting out certain conditions, such as cancellation provisions, registration in the Land Title Office and security. Therefore a new by-law is required for the VCCEP encroachments.

On June 20, 2005 the Development Permit Board approved the complete development permit application DE408490 for the construction of VCCEP subject to conditions to be fulfilled by the applicant prior to issuance of the development permit. Condition 1.16 requires the creation of a single parcel for the VCCEP site. Recognizing that there will continue to be portions of the building outside of the to-be-created site, Conditions A.1.26 and A.2.17(d) of the development permit approval requires the applicant to enter into Encroachment Agreements for the portions of the building that extend onto City road and City right-of-way for road purposes.

When encroachments on to City streets are proposed, the City Surveyor, on behalf of the City Engineer, reviews the proposal to determine whether or not the encroachment is supportable. All of the encroachments proposed as part of the development permit application process have been deemed supportable by the City Engineer. Since the Development Permit Board approval there has been one additional proposed encroachment which is still under review by the City Engineer and hence the desire of staff to have an approved form of agreement as this will allow staff and VCCEP to discuss the terms and conditions of the encroachment prior to the City Engineer determining if this, or any other future request for encroachment by VCCEP, is approvable.

VCCEP represents an investment of \$615 million through a funding partnership involving the Province of British Columbia, the Government of Canada and Tourism Vancouver. When VCCEP is completed convention centre space in Vancouver will triple and the site will serve as the broadcast centre for the 2010 Olympic and Paralympic Winter Games. VCCEP estimates this project will generate 6,700 construction related jobs and 7,500 permanent jobs once the facility opens.

DISCUSSION

All of the currently proposed encroachments of the VCCEP building, as per the development permit application, allow the public realm to blend seamlessly into Burrard Street, Canada Place and the City right-of way on City owned Lot 21 (Harbour Green Park). This design has undergone much public debate and has received the support of the Urban Design Panel and the Development Permit Board. The project encroachments, as they are currently proposed, arise in part from City's requirement and create public benefits of an improved public realm and that is why the City Engineer recommends the form of agreement, as attached to the by-law attached as Appendix A, with regard to allowing the encroachment for the life of the building, and should Council chose not to enact the by-law the City Engineer would, as allowed under the existing Encroachment By-law, adjust the typical cancellation clause from 6 months notice to allow the encroachment for the life of the building to ensure the public realm is not affected.

The Encroachment By-Law states which types of encroachments require Encroachment Agreements and if the annual fee is applicable. The current annual charges are set as \$150.00 for the first 150 square feet and \$4.00 per square foot thereafter. If Council chose not to enact the by-law as attached as Appendix A, the existing Encroachment By-Law would prevail and the registered owner of the VCCEP building would be required to pay the annual charge of approximately \$59,500 for the currently supported encroachments, which would increase to \$65,500 if the additional proposed encroachment under review by the City Engineer is found to be supportable. Staff are recommending that the attached by-law does not include an annual fee because of the public nature of the development, as the financing source is primarily from senior levels of government, and because of the public benefit created by the encroachments. Council's approval for establishing the by-law to allow the encroachment without annual fees should be seen as one of the City's indirect contributions to ensuring this important public project is delivered successfully.

Finally, the Encroachment By-Law requires that a secured charge, such as an equitable charge, be registered as part of any encroachment agreement. VCCEP Ltd., the current property owner of the site where the expansion building is being constructed, is wholly owned

by the Province of British Columbia and therefore it is not appropriate to require a secured charge to be registered on the title of the lands.

CONCLUSION

Staff are recommending that Council approve the form of Encroachment Agreement between the City and VCCEP, as attached to the by-law attached as Appendix A. With Council's direction in Recommendation B staff bring forward for enactment such by-law that will enable the City enter into Encroachment Agreements with the VCCEP that will to not include an annual fee and will remove the requirement for registering a secured charge.

Council's approval of these Recommendations will further demonstrate the City's ongoing commitment to the Vancouver Convention Centre Expansion Project and be considered an indirect contribution to the successful completion of the Project.

* * * * *

APPENDIX A

BY-LAW NO. _____

A By-law to approve a standard form of encroachment agreement between the city and Vancouver Convention Centre Expansion Project Ltd. regarding certain encroachments on, over, or under certain streets and statutory rights of way owned by the city

THE COUNCIL OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. In connection with the expansion of the Vancouver Convention and Exhibition Centre on PID: 025-522-281 Parcel D and PID: 025-522-299 Parcel E, both of the Public Harbour of Burrard Inlet, New Westminster District, Plan BCP1698, and adjacent lands, and any encroachments on, over, or under city streets or statutory rights of way needed by Vancouver Convention Centre Expansion Project Ltd. in connection with such expansion, Council approves a standard form of encroachment agreement between the City and Vancouver Convention Centre Expansion Project Ltd., substantially on the terms and conditions of the agreement attached as Schedule A to, and forming part of, this By-law.
2. Council authorizes the Director of Legal Services, on behalf of the city, to execute and deliver to Vancouver Convention Centre Expansion Project Ltd. encroachment agreements in the standard form referred to in section 1 of this By-law that are satisfactory to the General Manager of Engineering Services and Director of Legal Services.
3. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
4. This By-law is to come into force and take effect on the date of its enactment.

ENACTED by Council this _____ day of _____, 2006

Mayor

City Clerk

Schedule A

LAND TITLE ACT
FORM C
(Section 233)
Province of British Columbia

GENERAL INSTRUMENT - PART 1 (This area for Land Title Office Use) Page 1 of pages

1. APPLICATION: (Name, address, phone number and signature of applicant, applicant's solicitor or agent)

Jim Blair
City of Vancouver Law Department
453 West 12th Avenue
Vancouver, B.C., V5Y 1V4
Phone 873-7514 (BTQ/) Client No. 10647

Signature of Agent

2. PARCEL IDENTIFIER(S) AND LEGAL DESCRIPTION(S) OF LAND:*

(PID)

(LEGAL DESCRIPTION)

3. NATURE OF INTEREST:*

DESCRIPTION

DOCUMENT REFERENCE
(page and paragraph)

PERSON ENTITLED TO
INTEREST

SEE SCHEDULE

4. TERMS: Part 2 of this instrument consists of (select one only)

(a) Filed Standard Charge Terms

[] D.F. No.

(b) Express Charge Terms

[xx] Annexed as Part 2

(c) Release

[] There is no Part 2 of this instrument

A selection of (a) includes any additional or modified terms referred to in Item 7 or in a schedule annexed to this instrument. If (c) is selected, the charge described in Item 3 is released or discharge as a charge on the land described in Item 2.

5. TRANSFEROR(S)/CHARGEHOLDER(S):*

6. TRANSFEREE(S):* (including postal address(es) and postal code(s))*

CITY OF VANCOUVER, a municipal corporation, 453 West 12th Avenue,
Vancouver, B.C., V5Y 1V4

7. ADDITIONAL OR MODIFIED TERMS:*

N/A

8. EXECUTION(S):** This instrument creates, assigns, modifies, enlarges, discharges or governs the priority of the interest(s) described in Item 3 and the Transferor(s) and every other signatory agree to be bound by this instrument, and acknowledge(s) receipt of a true copy of the filed standard charge terms, if any.

Officer Signature(s)	Execution Date			Party(ies) Signature(s)
	Y	M	D	
_____	06			by its authorized signatories:
(Solicitor) as to both signatures				_____
_____	06			_____
				Signature and Print Name
				CITY OF VANCOUVER
				by its authorized signatory:

				Print Name

OFFICER CERTIFICATION: Your signature constitutes a representation that you are a solicitor, notary public or other person authorized by the Evidence Act, R.S.B.C. 1996, c.124, to take affidavits for use in British Columbia and certifies the matters set out in Part 5 of the Land Title Act as they pertain to the execution of this instrument.

* If space insufficient, enter "SEE SCHEDULE" and attach schedule in Form E.

** If space insufficient, continue executions on additional page(s) in Form D.

LAND TITLE ACT
FORM E
SCHEDULE

Enter the Required Information in the Same Order as the Information Must Appear on the Freehold Transfer Form, Mortgage Form or General Document Form.

3. NATURE OF INTEREST

DESCRIPTION	DOCUMENT REFERENCE (page and paragraph)	PERSON ENTITLED TO INTEREST
Easement and Indemnity Agreement	Entire Instrument Pages __ to __	Transferee
Priority Agreement granting the above Easement and Indemnity Agreement priority over Mortgage _____ and Assignment of Rents _____	Page __	Transferee
Statutory Right of Way	Page __ Paragraph __	Transferee
Priority Agreement granting the above Statutory Right of Way priority over Mortgage _____ and Assignment of Rents _____	Page __	Transferee

TERMS OF INSTRUMENT - PART 2
ENCROACHMENT AGREEMENT
VANCOUVER CONVENTION CENTRE EXPANSION PROJECT

WHEREAS:

- A. The Transferor, Vancouver Convention Centre Expansion Project Ltd., hereinafter is called the "Owner";
- B. The Transferee, CITY OF VANCOUVER, hereinafter is called the "City" where referred to as the municipal corporation and the "City of Vancouver" where referred to as the geographical area;
- C. The Owner is the registered owner of lands and premises in the City of Vancouver, Province of British Columbia, with the legal description:
- Parcel Identifier:
Lot
- (hereinafter called the "Lands");
- D. The Owner, under Development Permit Application _____ has applied to the City for permission to construct the Vancouver Convention Centre Expansion Project (the "Project"); and
- E. The Owner has requested the City's permission to construct and maintain certain encroachments on **City street/City statutory right of way** related to the Project; and
- F. The City has agreed to permit the encroachment, subject to the provisions of the City's Encroachment By-law (the "Encroachment By-law") and the provisions of this agreement.

THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agreed to and accepted, the parties agree as follows:

Encroachment

1. The Owner, at its expense, is hereby permitted to construct, keep and maintain on City street appurtenant to the Lands certain encroachments consisting of _____ (the "Encroachment") encroaching onto _____ as shown on the plan annexed to this Agreement as Schedule "A" (the "Encroachment Area").
2. The Owner will not be required to pay annual fees in respect of the Encroachment for so long as the Project is, in the sole opinion of the City Engineer, used primarily as a convention and exhibition centre.

3. The Owner, solely at its expense, once the Encroachment has been installed, will immediately cause a survey plan, satisfactory to the City Surveyor, to be prepared by a BC Land Surveyor showing its exact location, "as-built", in relation to the Encroachment Area and forthwith deliver four (4) copies of the survey plan to the City Surveyor. If such survey shows that the Encroachment as built or any portion of it is located outside of the Encroachment Area, the Owner, solely at its expense, will immediately execute a modification or replacement of this Agreement drawn to the City's satisfaction to account for the actual location of the as-built Encroachment.

4. If the Encroachment is not completely and fully installed as contemplated hereby within 36 months of the date of registration of this agreement on title to the Lands, then this agreement and the permission granted to the Owner hereby to install and maintain the Encroachment on City street appurtenant to the Lands will terminate immediately without notice to any party hereto, and the City at anytime thereafter, at the Owner's request and expense, will release and discharge the charges contained herein from title to the Lands, unless the City at the Owner's request expressly consents in writing to extend the time during which the Owner may install the Encroachment, in which case this paragraph will apply to the extended period of time so consented to.

5. The Owner, at its expense, will maintain the Encroachment in good and sufficient repair at all times, to the satisfaction of the City Engineer, except that the Owner will not excavate on City street or in any way change the Encroachment so as to enlarge or alter the Encroachment Area without the prior written consent of the City Engineer.

6. Within six months of any termination of this agreement or by such other time as the City may require upon any termination of this agreement, the Owner, at its expense, will remove the Encroachment from City street and repair any related damage to any City property and any other property for which the City is responsible and restore the Encroachment Area to the satisfaction of the City Engineer.

7. If at any time after this agreement is registered at the Land Title Office, and following construction or installation of the Encroachment, there is any construction on the Lands affecting the Encroachment, the Owner, at its expense, once such construction is substantially complete, will immediately arrange for a B.C. Land Surveyor to carry out a survey regarding and prepare and deliver to the City, to the satisfaction of the City Surveyor, a survey plan showing the location of the Encroachment. If such survey plan shows the Encroachment or any or any parts of them to be located outside the encroachment area shown on the plan annexed hereto, the Owner, at the option of the City Engineer, will forthwith immediately cause a revised survey plan in respect thereof to be prepared in accordance with this paragraph and the Owner will execute forthwith upon the City's request a modification or replacement of this agreement in form satisfactory to the City's Director of Legal Services so as to take into account any such change in the location or extent of encroachment.

8. Before at any time commencing any modifications or repairs to or removing the Encroachment, or any or any parts of them, the Owner will obtain any permits and licenses required in respect thereof pursuant to the Encroachment By-law and any other City by-law and will pay any inspection, licence and permit fees required in respect thereof.

9. If at any time hereafter the Encroachment or any of them are in any way removed from City street, and not replaced, then within six months after such removal, or by such other time as the City may require, the Owner at its expense will repair and restore the Encroachment Area to the extent affected by the presence of the Encroachment to the satisfaction of the City Engineer.

10. In the event that the construction, maintenance, use and/or removal of the Encroachment makes necessary any change or alteration to any meter, water-service, sewer or other public works or utilities in the vicinity of the Lands, the Owner will reimburse the City the full amount of any expenses the City may incur in making such alterations or changes as may be deemed necessary by the City Engineer.

Statutory Right of Way

11. The Owner hereby grants to the City pursuant to Section.218 of the *Land Title Act*, the full, free and uninterrupted right, liberty, easement and statutory right of way, charging the Lands, to enter upon those portions of the Lands the City Engineer considers necessary, with or without men, tools and equipment and supplies in order to inspect the Encroachment or to carry out any obligations of the Owner in this agreement that the Owner fails to fulfill, observe or perform to the satisfaction of the City Engineer. This statutory right of way is necessary for the operation and maintenance of the City's undertaking.

Amounts Owing to City

12. If the Owner fails to carry out its obligations under the terms of this agreement or any of them, the City may, but will not be obligated to, remedy the default, and the Owner will pay to the City the amounts of any costs the City might thereby incur from time to time, plus a reasonable sum (not greater than twenty percent (20%) of such costs) as a surcharge for the City's overhead, forthwith after the City delivers to the Owner a written request for payment thereof.

13. If the Owner fails to pay to the City any amounts it is required to pay to it pursuant to this agreement within thirty (30) days after the City delivers to the Owner a written request for payment thereof, such amounts will be considered to be in arrears and thereafter will bear interest at the rate of three percent (3%) per annum above the "Prime Rate" (hereinafter defined), calculated monthly not in advance, from the date due until paid. In this clause, "Prime Rate" means the floating annual percentage rate of interest as established from time to time by the Bank of Montreal, 595 Burrard Street, Vancouver, British Columbia, as the base rate that will be used to determine the rates of interest charged by it for Canadian dollar loans to customers in Canada and designated by the Bank of Montreal as the prime rate; provided that if a court declares or holds the Prime Rate to be void or unenforceable for any reason including uncertainty, then the rate of interest payable on amounts in arrears hereunder will be eighteen percent (18%) per annum calculated monthly not in advance, from the date due until paid.

Termination by City

14. The City, in its sole discretion, may terminate this agreement if, following completion of construction, commissioning and public opening of the Project (and except during the currency of any activities related to the 2010 Olympic and Paralympic Winter Games) in the sole opinion of the City Engineer, the Project is not used primarily as a convention and exhibition centre.

General

15. This agreement is entered into pursuant and subject to and the Owner at all times during the existence of this agreement and the Encroachment will comply with the provisions of the Encroachment By-law and all other City by-laws applicable to the Encroachment, and if the Owner fails to comply with the provisions of any such by-laws or this agreement, all rights of the Owner hereunder will thereupon terminate. Nevertheless, the City will be entitled to proceed with the enforcement of any security or indemnity herein provided, or upon any bond or otherwise in satisfaction of any claim, loss or expenses of any kind arising under this agreement or from the permissions granted hereby.

16. No provision of this agreement and no act or omission or finding of negligence, whether joint or several, as against the City, in favour of any third party, will operate to relieve, or be deemed to relieve, the Owner in any manner whatsoever from any liability to the City under this agreement or under the provisions of the *Vancouver Charter*, and amendments thereto.

17. This agreement will not in any way operate to restrict the right of the City at any time to alter, whether by widening the roadway or boulevard, or by raising or lowering the elevation of the street abutting or adjoining the Lands, and notwithstanding that the effect of such alteration in width and/or elevation may be to render the Encroachment useless for the purposes of the Owner; and the Owner covenants that, in the event of the City effecting any such alteration as aforesaid in the width and/or elevation of the said street, it will release and forever discharge, and hereby releases and forever discharges, the City from all manner of claims of any nature whatsoever, which may arise by reason of such alteration in width and/or elevation as aforesaid, or by reason of the discontinuance and removal of the Encroachment, as a result of such alteration in width and/or elevation.

18. Words used herein in singular or plural form and pronouns used in masculine, feminine or a neutral form will include within their meanings herein any other such forms as the context may require.

19. Any covenant, agreement, condition or proviso made herein by two (2) or more persons will be construed to be made jointly and severally.

20. The Owner will do or cause to be done all acts and things and execute all documents as are necessary to ensure that this agreement is registered in the Land Title Office against title to the Lands, with priority over all other charges and encumbrances registered against title to the Lands as the City might require.

21. This agreement and the interests granted hereby will run with the Lands, and the term "Owner" as used herein means the registered owner of the Lands.

22. This agreement will enure to the benefit of and be binding upon the parties hereto and their successors and assigns, provided however, the Owner will not be liable for breaches or non-observance or non-performance of covenants herein occurring after it has ceased to be the registered owner of the Lands.

23. Nothing contained or implied herein will derogate from the obligations of the Owner under any other agreement with the City or limit or otherwise affect the City's rights, powers, duties or obligations under the *Vancouver Charter*, S.B.C. 1953, Ch. 55 or any other legislation.

IN WITNESS WHEREOF the parties have executed this agreement by signing the General Instrument - Part I attached hereto.

PRIORITY AGREEMENT

MEMORANDUM AS TO ENCUMBRANCES, LIENS AND INTERESTS

Holder of Mortgage _____ (the "Chargeholder")
and Assignment of Rents _____ (together the "Charge")
charging _____ (the "Lands")

For One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed to by the Chargeholder, the Chargeholder, being the holder of the Charge, hereby consents to the granting of the Easement and Indemnity Agreement, Statutory Right of Way and Equitable Charge (the "Encumbrances") which are contained in the attached agreement, and consents and agrees that the Encumbrances shall be binding upon the Chargeholder's interest in or charge upon the Lands and shall be encumbrances upon the Lands in priority to the Charge in the same manner and to the same effect as if the Encumbrances had been granted and registered against title to the Lands prior to the dating, execution and registration of the Charge and the advance of any monies thereunder.

IN WITNESS WHEREOF the Chargeholder has executed this priority agreement by causing its proper officers to sign the General Instrument - Part 1 attached hereto.

Attach the plan.

END OF DOCUMENT