

Report Date: June 4, 2010  
Contact: Paul Storer  
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VanRIMS No.: 08-2000-20  
Meeting Date: June 22, 2010

TO: Vancouver City Council

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

SUBJECT: 1 Robson Street (BC Place Stadium) - Encroachment Agreements

#### *RECOMMENDATION*

- A. THAT, in connection with the upgrade of B.C. Place at 1 Robson St (PID: 008-332-614 Lot 153 False Creek Plan 20421) and adjacent lands (the "BC Place Site"), and any encroachments on, over, or under City streets or statutory rights of way needed by BC Pavilion Corporation for the BC Place Site, Council approve a standard form of Encroachment Agreement between the City and BC Pavilion Corporation generally 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 October 16, 2008 Council authorized the City Manager or the Deputy City Manager to finalize, execute and deliver an Upgrade Commitment Agreement with BC Pavilion Corporation (PavCo). The agreement acknowledged that non-standard forms of encroachment agreements may be accepted for portions of the rehabilitated BC Place which would extend onto, above, or below City street.

#### *PURPOSE*

The purpose of this report is to seek Council authority for the City to enter into Encroachment Agreements with PavCo for the BC Place Site, substantially on the terms and conditions of the agreement attached to the by-law attached as Appendix A. Encroachment Agreements may be required for any above, at, or below grade encroachments appurtenant to BC Place Stadium at 1 Robson St (formerly 777 Pacific Boulevard) as requested by PavCo 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 Encroachment Agreements for the BC Place Site (the "BC Place Encroachment Agreements"). With Council's approval of this by-law, the BC Place Encroachment Agreements would vary from the City's standard form of encroachment agreement in that they would not include an annual fee, would not contain a provision for indemnification nor registration of security, and would not be subject to cancellation until such time as the City Engineer has deemed that the project is not used primarily as a stadium.

### ***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, indemnification, and security. When encroachments onto 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, and arranges for the owner to enter into a standard form of Encroachment Agreement, where required.

In 2006 Council passed a by-law approving an alternative form of agreement with PavCo for the Vancouver Convention Centre Expansion Project (the "VCCEP Encroachment Agreements"). The alternative form differs from the standard form of agreement in the following ways:

1. **Fees.** The alternative form does not require fees to be paid to the City, as it was felt that the encroachment fees that would be generated from the encroachments were not appropriate to charge a higher level of government for a building with a high level of public benefit.
2. **Cancellation Provisions.** The standard agreement gives the City Engineer the authority to require the owner to remove the encroachment when given 6 months notice. Given the public nature of the building and its ownership by a higher level of government, this was not deemed necessary and the encroachments would be accepted until the City Engineer deemed the building not used primarily as a convention and exhibition centre.
3. **Indemnification and Security.** The alternative form does not require indemnification or the registration of security for the encroachment. Given that the owner is a higher level of government, it was determined that these were not required.

### ***DISCUSSION***

In conjunction with the upgrading of BC Place Stadium, PavCo and the City entered into an "Upgrade Commitment Agreement", which outlined the general approach for permissions and agreements associated with the rehabilitation. The agreement acknowledged that portions of the rehabilitated BC Place would encroach onto City street and/or underneath the Georgia Viaduct, and that these may be dealt with through either a modification of an existing volumetric lease of street or through encroachment agreements. The existing volumetric lease, registered as R102472, is a 99-year lease which was granted for a nominal fee in 1987 for the portions of the BC Place Plaza over Expo Boulevard, and is directly below the proposed encroaching spires. After review of the lease staff feel that the best way to deal with City street encroachments which are not related to the Plaza will generally be through separate encroachment agreements. The encroachment agreements will be easier to administer over the long term than modifications of a street lease, and, if the form of

agreement attached in Appendix A is approved, will offer PavCo similar rights and tenure to a street lease.

The proposed City street encroachments include several of the spires for the new roof, which are proposed to extend over Expo Boulevard. Should further encroachments be required, the attached form of agreement would give the City flexibility to accept them through an expedited process. In the case of any proposed encroachments under the Georgia Viaduct, the Upgrade Commitment Agreement contemplated the alternatives of an encroachment agreement or, depending on the nature and use of the encroachment, a further volumetric lease. In the case of the former alternative, the attached form of agreement would be used. In the case of the latter alternative of a volumetric lease, staff would report further to Council and seek authority to grant such a lease.

BC Pavilion Corporation, the current property owner of BC Place, is owned by and is an agent of the Government of British Columbia. Given that the situation is similar to the VCCEP site, in that this is a public facility owned by PavCo, it would be appropriate for the form of Encroachment Agreement to be similar to the VCCEP Encroachment Agreement. As with the VCCEP Agreement, it would not contain a requirement for fees, the 6-month cancellation requirement, indemnification, or registration of security. If the Encroachment Agreement, substantially in the form attached in Appendix A, is approved by by-law, the form of agreement would also apply to any future encroachments from the BC Place Site.

#### *FINANCIAL IMPLICATIONS*

Under the Encroachment By-Law No. 4243, items which generate fees are currently assessed at a rate of \$162.24 plus \$4.33 for every square foot exceeding 150 square feet. While detailed plans for the proposed encroachments are not yet available, it is expected that if they were approved under the Encroachment By-Law they would be subject to yearly fees in the order of \$20,000. Should recommendations A and B be approved, no fees would be charged.

#### *CONCLUSION*

Staff recommend that Council approve the form of Encroachment Agreement between the City and BC Pavilion Corporation for the BC Place Site, as attached to the by-law attached as Appendix A.

\* \* \* \* \*

Appendix A

BY-LAW NO. \_\_\_\_\_

**A By-law to approve a standard form of  
encroachment agreement between  
the City and B.C. Pavilion Corporation 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 upgrade of B.C. Place on PID: 008-332-614 Lot 153 False Creek Plan 20421, and adjacent lands, and any encroachments on, over, or under City streets or statutory rights of way needed by B.C. Pavilion Corporation in connection with such building, Council approves a standard form of encroachment agreement between the City and B.C. Pavilion Corporation, 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 B.C. Pavilion Corporation encroachment agreements substantially 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 \_\_\_\_\_, 2010

\_\_\_\_\_  
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 9 pages

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

\_\_\_\_\_  
Signature of Agent

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

(PID)	(LEGAL DESCRIPTION)
008-332-614	Lot 153 False Creek Plan 20421

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  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):\*

**B.C. PAVILION CORPORATION** (Incorporation No. 820830)

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.

Execution Date

Officer Signature(s)	Y	M	D	Party(ies) Signature(s)
_____	10			<b>B.C. PAVILION CORPORATION</b> by its authorized signatories:  _____ Signature Print Name: _____
_____	10			<b>CITY OF VANCOUVER</b> 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

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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 4 to 9	Transferee
Statutory Right of Way	Page 6 Paragraph 11	Transferee

TERMS OF INSTRUMENT - PART 2  
ENCROACHMENT AGREEMENT  
B.C. PLACE UPGRADE PROJECT

WHEREAS:

- A. The Transferor, B.C. PAVILION CORPORATION, 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: 008-332-614  
Lot 153 False Creek Plan 20421
- (hereinafter called the "Lands");
- D. The Owner intends to rehabilitate B.C. Place Stadium by completing various upgrades and other renovations including by, but not limited to, a new replacement fabric roof (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 stadium.
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 in the sole opinion of the City Engineer, the Project is not used primarily as a stadium.

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.

SCHEDULE "A"

(Attach plan)

END OF DOCUMENT