
CITY OF KELOWNA

MEMORANDUM

Date: June 13, 2007
File No.: 5480-06
To: City Manager
From: Ron Westlake, Transportation Manager
Subject: License of Occupation for the parking lot at 1436 St. Paul Street

Report Prepared by: Stuart Evans, Parking Coordinator

RECOMMENDATION:

THAT Council authorize staff to enter into a License of Occupation with Avion Multiplex Construction Inc., for a period of 12 months at \$1,000.00 per month commencing June 15, 2007, for the northern ½ of the parking lot located at 1436 St. Paul Street, in the form attached to the Report of the Transportation Manager dated June 13, 2007.

AND THAT the Mayor and City Clerk be authorized to execute all documents necessary to complete this transaction.

AND THAT the 2007 financial plan be amended to reduce parking revenue by \$33,390 annually with a reduction in the appropriation to the parking reserve.

BACKGROUND:

Transportation received a request to use the northern ½ of 1436 St. Paul Street, currently used for public parking, for pre-construction requirements for Avion - Multiplex Construction Inc., the contractor for the Cardington Apartment to be constructed on the southern ½ of 1436 St. Paul Street.

Staff from both Transportation and Community Development and Real Estate have reviewed this request and have negotiated a License of Occupation with Avion for \$1000 per month for a 12 month period starting June 15, 2007. This License of Occupation will account for approximately 50% of the revenues that would have been generated by the property if pay parking was to remain. Staff feels that due to this project being completed for a non-profit society the negotiated rate is fair.

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS: Community Charter

FINANCIAL/BUDGETARY CONSIDERATIONS: Amendment to 2007 financial plan

Considerations not applicable to this report:

LEGAL/STATUTORY AUTHORITY: N/A

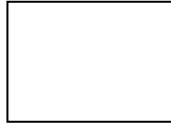
EXISTING POLICY: N/A

PERSONNEL IMPLICATIONS: N/A

TECHNICAL REQUIREMENTS: N/A

EXTERNAL AGENCY/PUBLIC COMMENTS: N/A
ALTERNATE RECOMMENDATION: N/A

Approval of this lease is respectfully requested.



Ron Westlake, Transportation Manager

Approved for Inclusion:
John Vos, Director of Work & Utilities

Attachment: License of occupation between City of Kelowna & Avion Multiplex Construction Inc.

LICENCE

THIS AGREEMENT dated for reference the ____ day of _____, 2007.

BETWEEN:

CITY OF KELOWNA, 1435 Water Street, Kelowna, B.C. V1Y 1J4

(the "City")

AND:

AVION-MULTIPLEX CONSTRUCTION INC, #240, 13500 Maycrest Way,
Richmond, B.C. V6V 2N8

("Avion")

WHEREAS:

- A. The City owns certain property which is used as a parking lot (the "Parking Area") and which is located at 1436 St. Paul Street and has a legal description of Lots 18 & 19, DL 139, ODYD, Plan 800.
- B. In the future, the City has plans to continue to provide public parking within the Parking Area.
- C. Avion requires the Parking Area for pre-construction storage of materials and equipment for the Cardington Apartment project, to be constructed at 1436 St. Paul Street on Lots 16 & 17, DL 139, ODYD, Plan 800.
- D. The City is prepared to grant Avion a Licence of Occupation for a term of 12 months over the Parking Area as outlined herein.

NOW THEREFORE in consideration of the payment of \$1,000.00 per month, for each month of the Term, from Avion to the City and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Avion covenant and agree as follows:

1. **Grant** - The City grants to Avion the exclusive right and licence to enter onto and use the Parking Area shown in bold on the attached plan which is attached hereto as Schedule A (the "Licence Area") for the purposes of storage of materials and equipment to be used in the construction of the Cardington Apartment project.
2. **Additional Rights** – For the purposes outlined in Section 1, Avion shall have the right to bring onto the Licence Area all necessary materials, vehicles, machinery, signage and equipment and to perform maintenance on such equipment and to restrict access to the Licence Area and the items stored there.
3. **Term** – The duration of this Agreement and the Licence herein granted shall be for a term of twelve (12) months commencing on May 25, 2007 unless earlier terminated in accordance with section 4 (the "Term").
4. **Early Termination** – Should the City wish to terminate this Agreement priory to its expiry under section 3, the Agreement shall terminate thirty (30) days after the date that notice of such intent is delivered to Avion. The City will not be liable to compensate Avion for damages, costs or losses resulting from the exercise of this right of termination or any termination of this Licence.
5. **State of Licence Area at Termination** – In the event that this Agreement terminates or expires, Avion will cease all occupation of the Licence Area and will remove all materials, vehicles, machinery, signage, equipment, fences, and other improvements from the Licence Area. Avion will leave the Licence Area in a safe, clean and tidy condition and clear of contamination occurring since the date of commencement of this Agreement. Avion will replace any signs, fences and other improvements removed from the Licence Area. In the event that Avion fails to remove any equipment or chattels upon termination or expiry of this Agreement then the City may do so and recover the expense thereof from Avion. All materials, vehicles, machinery,

signage, equipment, fences, and other improvements remaining on the Licence Area become the sole property of the City upon termination of this Agreement, without any compensation whatsoever to Avion.

6. **Exclusive Use** – Avion agrees that:

- (a) the rights granted under this Agreement entitle Avion to exclusive possession of the Licence Area; and
- (b) Avion's rights under this Agreement are at all times subject to the rights and interest of the City as owner and possessor of the Licence Area.

7. **Hazardous Materials** – Avion will not place, store, use, manufacture or release any Hazardous Materials on the Licence Area. Hazardous Materials means all explosives, radioactive materials, pollutants, contaminants, hazardous or toxic substances, special waste, or other waste (including chlorobiphenyls) the storage, use, manufacture, or release of which into the environment is prohibited, controlled or regulated under any laws, regulations, orders, bylaws, permits or lawful requirement of any governmental authority in respect of environmental protection or the regulation and use of hazardous materials. Avion will indemnify the City in respect of any costs, expenses, damages or claims which may be suffered by the City in respect of Hazardous Materials placed, stored, used, manufactured or released on the Licence Area by Avion including all clean-up and remediation costs and legal or professional fees. This indemnity will survive the expiry or sooner termination of this Agreement.

8. **Fill** – Avion will not import any fill material onto the Licence Area.

9. **Construction** – nothing in this agreement allows Avion to construct anything other than signs, fences, and gates restricting access within the Licence Area. Prior to constructing any signs, fences or gates Avion will obtain approval as per section 12 of this Licence and will obtain approval of the design and materials from the City Parking Coordinator.

10. **No Burning** – Avion will not burn any materials on the Licence Area.
11. **No Waste or Nuisance** – Avion will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
12. **Terms and Conditions** – Avion will comply with all the terms, conditions, rules or regulations that the City may from time to time impose in respect of the use and administration of the Licence Area. Avion acknowledges that the fact that this Licence is granted by the City does not excuse Avion from obtaining building permits, development permits, business licences and other required permissions.
13. **Maintenance** - Avion will at its own cost keep the Licence Area in a safe, clean and tidy condition, and will remove snow from the Licence Area.
14. **Compliance with Laws** –Avion will comply with all laws and regulations pertaining to its use and occupation of the Licence Area.
15. **Inspection by City** – The City may review and inspect the Licence Area and the work which Avion is undertaking pursuant to this Agreement to determine if Avion is in compliance with the terms of this Agreement.
16. **No Transfer** – The rights granted to Avion under this Agreement may not be sublicensed, assigned, or otherwise transferred.
17. **Risk** – Avion accepts the Licence Area on an as-is basis and agrees that it will use the Licence Area at its own risk, and the City will not be liable in respect of any loss of life, personal injury, damage to property, loss of property or other loss or damage suffered by Avion, its contractors, subcontractors, agents, invitees, employees or any other person arising out of this Agreement or

the use and occupation of the Licence Area except in the case of negligent or wilful act or omission by the City, its employees, agents or invitees.

18. **Indemnity** – Avion will indemnify and save harmless the City and its elected and appointed officials, officers, employees, agents and others from and against any claim, action, damage, liability, cost and expense in connection with loss of life, personal injury, loss of property, damage to property or other loss or damage arising from this License or any occurrence on or around the Licence Area during the term of this License, or by use or occupancy of the Licence Area by Avion or any default of Avion under this Agreement or any wrongful act, omission or negligence of Avion or its officers, employees, contractors, agents or others for whom Avion are responsible. This indemnity will survive the expiry or sooner termination of this Agreement.

19. **Release** – Avion hereby releases and forever discharges the City, its elected officials, officers, employers, agents and invitees, of and from any claim, causes of action, suit, demand, expense, cost, legal fees and compensation of whatever kind, whether known or unknown, at law or at equity, including without limitation any claim under the *Property Law Act* (collectively, “Claims”), which Avion may have, sustain or suffer, as the case may be, now or in the future arising from the Works, other improvements in the Licence Area, the expiry or termination of this Licence, the exercise by the City of any of its rights under this Licence or from or in any way connected with the Licensee’s use of the Licence Area, except claims arising from the sole negligence of the City.

20. **Economic Loss** – Notwithstanding or despite any other part or provision of this Agreement in no event shall the City be liable to Avion for any special damages, indirect damages, incidental damages or consequential damages, including economic loss.

21. **Insurance** – During the term of this Agreement, Avion will carry public liability insurance, in a form and with an insurer acceptable to the City’s Risk Manager, insuring

Avion and the City under this Agreement in an amount not less than \$5,000,000 per occurrence, and any other type of insurance that the City's Risk Manager may reasonably require. Avion will provide the City's Risk Manager with proof of the insurance at the time of execution of this Agreement annually upon renewal of the insurance policy.

22. **Notices** – Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and delivered by hand or mailed by prepaid registered mail or sent by facsimile transmission to the intended party at its address set out on page 1 of this Agreement or to such other address as either party may provide in writing to the other pursuant to the provisions of this paragraph.

All notices to the City must be marked to the attention of the City's Parking Coordinator.

A notice will be deemed to be received on the day it is delivered, if delivered by hand, on the day of transmission, if sent by facsimile, or 3 days after the date it was mailed or if that day is not a Business Day, the next day that is a Business Day. If mailed, should there be at the time of mailing or between the time of mailing and the deemed receipt of the notice, a mail strike or slowdown, labour or other dispute which might affect the delivery of such notice by the mails, then such notice will only be effective if delivered by hand or sent by facsimile transmission.

23. **No Effect on Laws or Powers** – Nothing contained or implied herein prejudices or affects the City's rights and powers in the exercise of its functions pursuant to the *Community Charter* or the *Local Government Act* or its rights and powers under any enactment to the extent the same are applicable to the Licence Area, all of which may be

fully and effectively exercised in relation to the Licence Area as if this Agreement had not been fully executed and delivered.

24. **Severance** – If any portion of this Agreement is held invalid by a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid must not affect the validity of the remainder of the Agreement.

25. **No Public Law Duty** – Whenever in this Agreement the City is required or entitled at its discretion to consider granting any consent or approval, or is entitled to exercise any option to determine any matter, or to take any action or remedy including, without limiting the generality of the foregoing, the termination of this Agreement and the re-entering of the Licence Area used or occupied by Avion, the City may do so in accordance with the contractual provisions of this Agreement and no public law duty of procedural fairness or principle of natural justice shall have any application.

26. **Further Actions** – Each of the parties hereto shall from time to time hereafter and upon any reasonable request of the other, execute and deliver, make or cause to be made all such further acts, deeds, assurances and things as may be required or necessary to more effectually implement and carry out the true intent and meaning of this Agreement.

27. **Waiver or Non-action** – Waiver by the City of any breach of any term, covenant or condition of this Agreement by Avion must not be deemed to be a waiver of any subsequent default by Avion. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by Avion must not be deemed to be a waiver of such term, covenant or condition.

28. **Reference** – Every reference to a party is deemed to include the heirs, executors, administrators, successors, servants, employees, agents, contractors and officers of such party wherever the context so requires or allows.

29. **General** –

- (a) The Schedules attached to this Agreement form part of this Agreement.
- (b) This Agreement constitutes the entire agreement between the parties and may not be amended except by agreement in writing signed by all parties to this Agreement.
- (c) Time is of the essence of this Agreement.
- (d) This Agreement must be construed according to the laws of the Province of British Columbia.

As evidence of their agreement to be bound by the above terms and conditions, the parties have executed this agreement below on the dates written below.

CITY OF KELOWNA by its authorized
signatories:

Mayor:

Clerk:

Date: _____

AVION - MULTIPLEX CONSTRUCTION

INC by its authorized signatories:

Name:

Name:

Date: _____

Schedule A

The License Area (Lots 18 & 19, DL 139, ODYD, Plan 800)

