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CITY OF KELOWNA

MEMORANDUM

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**Date:** October 29, 2008  
**File No.:** 2390-20-002  
**To:** City Manager  
**From:** Manager, Community Development & Real Estate  
**Subject:** **CANCER CENTER – LICENSE OF OCCUPATION (STRATHCONA PARKING LOT)**

*Report Prepared by: Tammy Abrahamson, Property Officer*

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**RECOMMENDATION:**

THAT Council authorize the Manager, Community Development & Real Estate to enter into a License of Occupation with The Cancer Center of the Southern Interior under the terms of the License attached;

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

**BACKGROUND:**

The Cancer Center received government funding to proceed with a major equipment replacement and expansion project. As a result, various contractors are required to work at the center and this has placed an overload on existing parking for staff. As well, due to patient workload, staff shifts have been extended to 8:30 p.m. on a regular basis.

In an attempt to relieve some of the stress and safety concerns from the staff, the Center has requested temporary use of the Strathcona Parking Lot for a five month term beginning November 1/08. The Center is also requested to post signage advising the public that the parking lot will reopen to public parking on April 1/09. The Center will pay \$500.00 per month for the exclusive use of the parking lot and will provide snow removal and general maintenance during this time.

**INTERNAL CIRCULATION TO:**

Parks Planning Manager  
Parking Coordinator

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**COMMUNICATIONS CONSIDERATIONS:**

Press release and advertisement

**LEGAL/STATUTORY AUTHORITY:**

Community Charter

**TECHNICAL REQUIREMENTS:**

The Parks Planning Manager has approved the use of the parking lot for this period and advised that it will not have a detrimental effect of park usage in the area.

Considerations that were not applicable to this report:

**LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:**

**EXISTING POLICY:**

**FINANCIAL/BUDGETARY CONSIDERATIONS:**

**PERSONNEL IMPLICATIONS:**

**EXTERNAL AGENCY/PUBLIC COMMENTS:**

**ALTERNATE RECOMMENDATION:**

Submitted by:



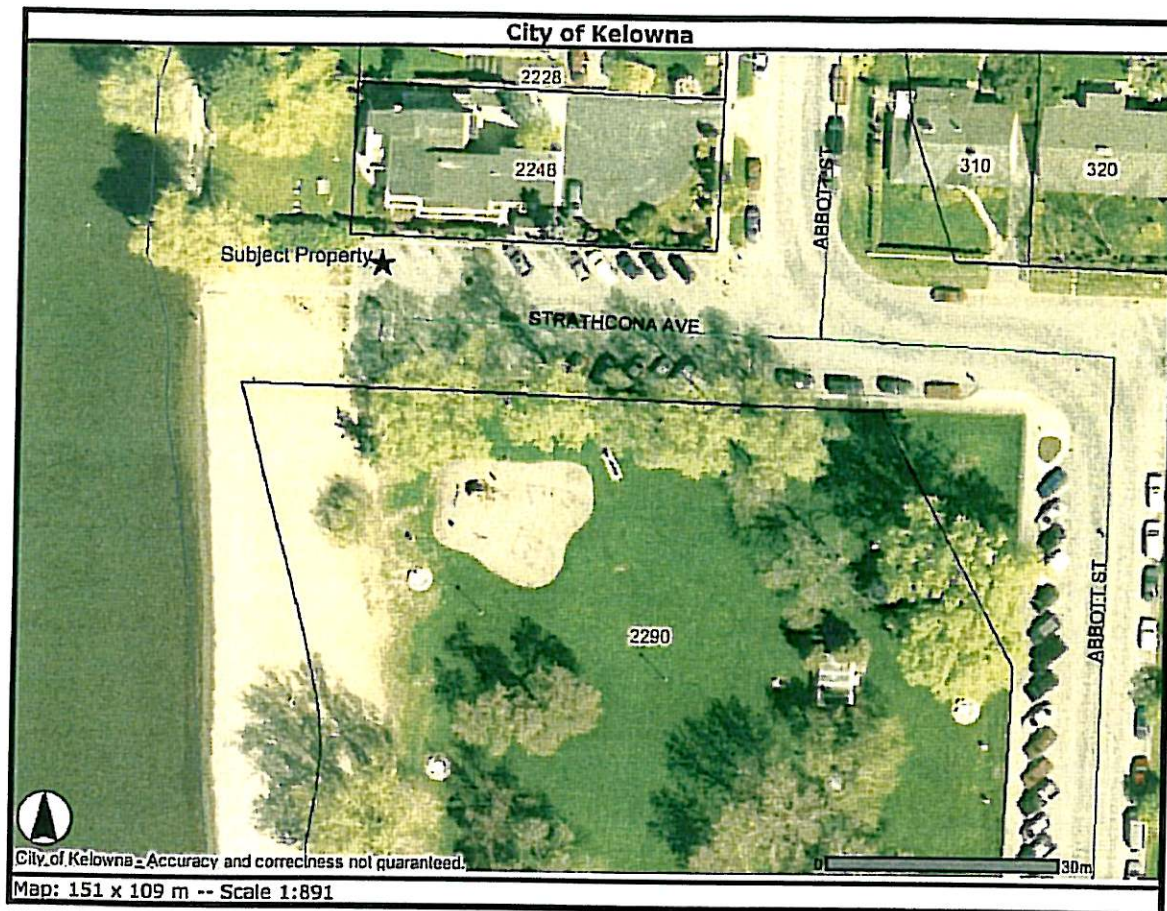
Doug Gilchrist, RIBC, PMP  
Manager, Community Development & Real Estate

Approved for Inclusion:



J. Vos, Director of Corporate Services

cc. Parks Manager  
Parking Coordinator



*This map is for general information only. The City of Kelowna does not guarantee its accuracy. All information should be verified.*

**LICENCE**

THIS AGREEMENT dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2008.

BETWEEN:

**CITY OF KELOWNA**

1435 Water Street, Kelowna, B.C., V1Y 1J4

(the "City")

AND:

**THE CANCER CENTER FOR THE SOUTHERN INTERIOR**

399 Royal Avenue, Kelowna, B.C., V1Y 5L3

("the Licensee")

WHEREAS:

- A. There is a dedicated road which is improved as a parking lot for Strathcona Park (the "Parking Area") which is immediately north of Lot D Plan B7087 that is used as public parking adjacent to Strathcona Park.
- B. In the future, the City has plans to continue to provide public parking within the Parking Area.
- C. the Licensee is experiencing restricted parking and extended hours, and wish to use the Parking Area for safe and accessible employee parking during a renovation period to replace a radiation treatment machine.
- D. The City is prepared to grant the Licensee a Licence of Occupation pursuant to section 35(11) of the *Community Charter*, S.B.C. 2003, c. 26 for a term of 5 months over the Parking Area to enable the Licensee to provide safe access to parking for its employees.

NOW THEREFORE in consideration of the payment of \$2,500.00 from the Licensee to the City and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Licensee covenant and agree as follows:

1. **Grant** - The City grants to the Licensee the exclusive right and licence to enter onto and use that portion of the Parking Area shown in bold as road on the attached plan which is attached hereto as Schedule A (the "Licence Area") for the purposes of maintaining and using the Parking Area.
2. **Additional Rights** - For the purposes outlined in Section 1, the Licensee shall have the right to bring onto the Licence Area all necessary materials, vehicles, machinery, signage and equipment and to perform maintenance and to restrict access to the Licence Area.
3. **Term** - The duration of this Agreement and the Licence herein granted shall be for a term of five (5) months commencing on November 1, 2008, unless earlier terminated in accordance with section 4.
4. **Early Termination** - Should the City wish to terminate this Agreement, the agreement shall terminate thirty (30) days after the date that such notice of such intent is delivered to the Licensee, provided such date is earlier than the date of termination of this licence. The City will not be liable to compensate the Licensee for damages, costs or losses as a result of the exercise of this termination or any termination of the License.
5. **State of Licence Area at Termination** - In the event that this Agreement terminates or expires, the Licensee will cease all occupation of the Licence Area and will remove all equipment, signs, fences, and other improvements from the Licence Area. the Licensee will leave the Licence Area in safe, clean and tidy condition and clear of contamination occurring since the date of commencement of this Agreement. The Licensee will replace any signs,

fences and other improvements removed from the Licence Area. In the event that the Licensee fails to remove any equipment or chattels upon termination of this agreement then the City may do so and recover the expense thereof from the Licensee. All improvements, fixtures, signs remaining on the Licence Area become the sole property of the City upon termination of this Agreement, without any compensation whatsoever to the Licensee.

6. **Exclusive Use** – the Licensee agrees that:
  - (a) the rights granted under this Agreement entitle the Licensee to exclusive possession of the Licence Area
  - (b) the Licensee 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** – the Licensee 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. the Licensee 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 the Strata Owners, 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** – the Licensee will not import any fill material onto the Licence Area
9. **Construction** – nothing in this agreement allows the Licensee to construct anything other than signs and gates restricting access within the Licence Area. Prior to constructing the signs and

gates the Licensee will obtain; approval as per Section 12 of this Licence and, will obtain approval of the design and materials from the City Parks Manager.

10. **No Burning** – the Licensee will not burn any materials on the Licence Area.
11. **No Waste or Nuisance** – the Licensee will not do or permit anything that may become a nuisance to occupiers or invitees on adjoining lands.
12. **Terms and Conditions** – the Licensee 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. The Licensee acknowledges that the fact that this Licence is granted by the City does not excuse the Licensee from obtaining building permits, development permits, business licences and other required permissions.
13. **Maintenance** - the Licensee 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. **Signage** – the Licensee will at its own cost post signs on the property notifying the public of the date of reopening parking
15. **Compliance with Laws** – the Licensee will comply with all laws and regulations pertaining to its use and occupation of the Licence Area.
16. **Inspection by City** – the City may review and inspect the Licence Area and the work which the Licensee is undertaking pursuant to this Agreement to determine if the Licensee is in compliance with the terms of this Agreement.



17. **No Transfer** – the rights granted to the Licensee under this Agreement may not be sublicensed, assigned, or otherwise transferred.
18. **Risk** – the Licensee 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 the Licensee, 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.
19. **Indemnity** – the Licensee 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 the Licensee or any default of the Licensee under this Agreement or any wrongful act, omission or negligence of the Licensee or its officers, employees, contractors, agents or others for whom the Licensee are responsible. This indemnity will survive the expiry or sooner termination of this Agreement.
20. **Release** – the Licensee 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 the Licensee 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.



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

**22. Insurance** – during the term of this Agreement, the Licensee will carry public liability insurance, in a form and with an insurer acceptable to the City, insuring the Licensee 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 may reasonably require. The Licensee will provide the City with proof of the insurance at the time of execution of this Agreement annually upon renewal of the insurance policy.

**23. 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 Clerk.

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.

**24.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 *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.

25. **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.
26. **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 the Licensee, 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.
27. **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.
28. **Waiver or Non-action** – waiver by the City of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of any subsequent default by the Licensee. Failure by the City to take any action in respect of any breach of any term, covenant or condition of this Agreement by the Licensee must not be deemed to be a waiver of such term, covenant or condition.
29. **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.

30. **Interpretation** – unless otherwise defined herein, all capitalized words shall have the meaning ascribed thereto in the Partnering Agreement to which this License is attached as a schedule.

31. **Security Deposit** – the Licensee will supply a bond, in the amount of \$1,000.00, as security for the observance of the terms of the License of Occupation. The security will be returned to the Licensee within 15 days of the termination of this License of Occupation pursuant to the terms and conditions stated in Section 5.

32. **General** –

- (a) This Agreement will bind and benefit each party to this Agreement, and its respective corporate successors.
- (b) The Schedules attached to this Agreement form part of this Agreement.
- (c) 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.
- (d) Time is of the essence of this Agreement.
- (e) 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: \_\_\_\_\_

**THE CANCER CENTRE FOR THE  
SOUTHERN INTERIOR** by its authorized  
signatories:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Name:

Date: \_\_\_\_\_