

Request for Decision



**In Compliance with the Community charter Section 90(1)(e)
Acquisition, Disposition or Expropriation of Land or Improvements
The disclosure of which Could Reasonably be
Expected to Harm the Interests of the Municipality**

To: In-Camera Meeting

From: **Development, Engineering and Planning**

Date: June 24, 2019

Subject: Roxul Inc. Group – Licence of Occupation for City owned land

Recommendation: **THAT Council direct staff to move forward with the Licence of Occupation to Roxul Inc. for the property legally described as: Lot 5, Plan KAP17928, DL 534, SDYD Exclusive of the City's Wastewater Treatment Facility and;**

THAT this in-camera Council report and resolutions respecting the Licence of Occupation for the property Legally described as Lot 5, Plan KAP17928, DL 534, SDYD be released as public municipal record.

Background

Roxul Inc. has an existing licence of occupation (LO) for the property legally described as: Lot 5, KAP17928, DL 534, SDYD exclusive of the City's infrastructure on the property.

Roxul Inc. uses the property as a storage facility for materials required for its manufacturing process.

The City has wastewater treatment facilities on this property. There has been no conflict between the uses on the property.

During the review process staff realized that there appears to be no legal access to the property; therefore, through this licence of occupation (LO), staff are proposing to secure a right-of-way agreement for access through Roxul Inc.'s property.

Benefits or Impacts

General

Through the Official Community Plan (OCP) the lease rather than the sale of City-owned lands is encouraged. This LO is consistent with the OCP and Real Estate Strategy Policy No. 806.

Roxul Inc. is one of the major employers within the City of Grand Forks. Roxul Inc. has had the lease for the property for several years. As outlined in the attached LO agreement, Roxul Inc. uses the property for the storage of materials required in their manufacturing process.

The LO allows for Roxul Inc. to use the property but does not grant Roxul Inc. the exclusive use of the property. The City has wastewater treatment facilities on this property. There has been no conflict between the uses on the property.

Staff have negotiated a LO rate that is consistent with market rates as follows:

1. **Period covering July 1, 2019 – June 30, 2024:** the annual payment will be \$11,080 (+GST) for the duration of the term.

Strategic Impact



Community Engagement

- The public will be notified of this LO agreement consistent with Section 26 of the Community Charter which, amongst other things, requires that a notice be published in a newspaper that is distributed at least weekly.



Community Livability

- The LO allows the city to maximize current and future use and revenue from the property.



Economic Growth

- A large employer within the City boundaries is afforded non-exclusive use of the property at market rates.



Fiscal Responsibility

- The LO agreement allows the City to utilize the property for its own purpose while generating revenue from the property.

Policy/Legislation

Community Charter, Official Community Plan, Real Estate Strategy Policy No. 806.

Attachments

Appendix 1

Page 1-8 Draft Licence of Occupation 2019 - 2024

Appendix 2

Page 1 Ad for placement in June 26th and July 3rd issues of the Gazette

Recommendation

THAT Council direct staff to move forward with the Licence of Occupation to Roxul Inc. for the property legally described as: Lot 5, Plan KAP17928, DL 534, SDYD Exclusive of the City's Wastewater Treatment Facility and;

THAT this in-camera Council report and resolutions respecting the Licence of Occupation for the property Legally described as Lot 5, Plan KAP17928, DL 534, SDYD be released as public municipal record.

Options

1. THAT Council accepts the report.
2. THAT Council does not accept the report.
3. THAT Council refers the matter back to staff for further information.

Report Approval Details

Document Title:	2019-06-24-Roxul-Licence_of_Occupation01.docx
Attachments:	- 2019-06-24-Appendix_1-Rockwool_Lot_5_LOC_2019-2024.pdf - 2019-06-24-Appendix_2-Roxul_Lot_5_LOC_2019-2024-Gazette_Ad.pdf
Final Approval Date:	Jun 19, 2019

This report and all of its attachments were approved and signed as outlined below:

Dolores Sheets - Jun 19, 2019 - 12:24 PM

No Signature - Task assigned to Diane Heinrich was completed by assistant Daniel Drexler

Diane Heinrich - Jun 19, 2019 - 12:26 PM

LICENCE OF OCCUPATION

THIS LICENCE made the ____ day of _____, 2019.

BETWEEN:

THE CORPORATION OF THE CITY OF GRAND FORKS

7217 4th Street, P.O. Box 220
Grand Forks, British Columbia, V0H 1H0

(the "City")

AND:

ROXUL INC.

P.O. Box 2890
Grand Forks, British Columbia, V0H 1H0

(the "Licensee")

WHEREAS:

- A. The City is the legal and beneficial owner of those lands and premises located in the City of Grand Forks and legally described as:

Parcel Identifier: 008-338-175

Legal Description: Lot 5, DL 534, Plan KAP17928, SDYD
Exclusive of the City's Wastewater Treatment Facility
(the "Land")

- B. The Licensee wishes to occupy a portion of the Land.
- C. The City wishes to grant a Licence of Occupation to the Licensee for the described Land, as outlined on the sketch plan attached hereto as Schedule "A" (the "Licensed Area").

NOW THEREFORE, in consideration of the sum of one dollar (\$1.00) paid by the Licensee to the City, the premises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. Grant of Licence

The City hereby grants to the Licensee and their employees, contractors, subcontractors and agents a non-exclusive licence to use and occupy the Licensed Area for purposes incidental to the operations of the Rockwool Insulation Manufacturing Facility located at 6526 Industrial Park Way, being the storage of minerals.

2. City Access Easement

The Licensee is the legal and beneficial owner of those lands and premises located in the City of Grand Forks and legally described as:

Parcel Identifier: 029-526-691
Legal Description: Lot 1, DL 534, Plan EPP23764, SDYD
(the "Property")

The Licensee hereby grants to the City and their employees, contractors, subcontractors and agents an easement ("the Easement") to enter onto and cross over those portions of the Property to access and maintain City facilities on the Land, including during emergency situations.

3. Rent

The Licensee shall pay to the City annually a rent in the amount of \$11,080.00, plus GST for the use of the Licensed Area (the "Rent"). The Rent shall be billed annually in advance.

4. Term

The term of the Licence shall be five (5) years, commencing on the 1st day of July, 2019 and expiring on the 30th day of June, 2024. (the "Term")

5. Renewal

At its election, the Licensee may, by written notice to the City given on or before six (6) months prior to the expiry of the Term, request that the Licence be renewed for an additional term of five (5) years commencing on the 1st day of July, 2024 and expiring no later than the 30th day of June, 2029. The City, acting reasonably, would grant the Licence renewal unless the Land were required for City purposes. The City, at its option and as a condition of renewal, may negotiate a new rate for the rent.

6. Condition of the Licensed Area

The Licensed Area is licensed to the Licensee on an "as is" basis, and the City makes no representation or warranties with respect to the condition of the Licensed Area.

7. Licensee's Covenants

The City covenants with the Licensee:

- a) To use the Land for the purposes incidental to the operations of the Rockwool Insulation Manufacturing Facility located at 6526 Industrial Park Way, being the storage of minerals.
- b) To keep the Land free from permanent structures;
- c) Not to bring Contaminants (as defined below) onto, into or under the Licensed Area; For the purpose of this Licence, "Contaminants" means any substance including without limitation, urea formaldehyde, hydrocarbons, lead, pollutants, polychlorinated biphenyls ("PCBs), contaminants, deleterious substances, dangerous substances or goods, hazardous, corrosive, or toxic substances, special waste, waste, pesticides, asbestos-containing materials, PCB-containing equipment or materials, and any other storage, manufacture, handling, disposal, treatment, generation, use, transport, remediation or release into the environment of which is now or hereinafter prohibited, controlled or regulated under any applicable laws.

8. Inspection

The City, and its officials, employees, contractors, subcontractors and agents may enter the Licensed Area to inspect the Licensed Area and the Works to ensure compliance with the terms and conditions of the Licence.

9. Dispute Resolution

The parties shall use commercially reasonable efforts to agree on any matter or resolve any dispute arising under this Agreement. If, despite the efforts of the parties, the parties are unable to determine the matter or resolve the dispute within thirty (30) days of the matter or dispute arising, the parties may, by further agreement, refer the matter or dispute to a mediator acceptable to each of the parties. Where the parties are unable to determine the matter or resolve the dispute with the assistance of a mediator, the parties may, by further agreement, refer the matter or dispute to a single arbitrator for determination in accordance with the Commercial Arbitration Act (British Columbia).

10. Termination

- a) The City may terminate this Licence upon thirty (30) days prior written notice to the Licensee in the event that the Licensee breaches a term of the Licence, which breach has not been remedied within 14 days of receiving notice of such breach from the City.
- b) Either party may terminate this Licence upon ninety (90) days prior written notice to

the other party. In the event that the Licence is terminated under this clause, the Licensee will remove all privately owned property from the Licensed Area.

10. Indemnity

Notwithstanding any other terms, covenants and conditions contained in the Licence, the Licensee will indemnify and save harmless the City and those for whom the City is responsible in law from and against any and all liabilities, claims suits, actions, including actions of third parties, damages and costs, including, without limitation, legal fees on a solicitor and own client basis, which the City may incur, suffer or be put to arising out of or in connection with any breach or non-performance of the obligations of the Licensee under this Licence, any loss or damage to property or personal injury or bodily injury, including death, of any person or any wrongful act or neglect of the Licensee, its employees, contractors, subcontractors or agents on or about the Licensed Area, or arising out of or in connection with the use and occupation of the Licensed Area, its employees, contractors, subcontractors or agents. This indemnity will survive the expiration or earlier termination of this Licence.

11. Release

The Licensee does hereby release and discharge the City from any and all actions, causes of action, suits and demands whatsoever and whether at law or in equity or otherwise arising which the Licensee may at any time have by reason of the exercise of the rights granted to the Licensee hereunder.

12. Non-liability of the City

The City will not be liable or responsible in any way for any personal injury that may be sustained by the Licensee, its invitees, those for whom the Licensee is responsible in law or any other person who may be upon, within or under the Licensed Area, or for any loss of or damage or injury to property belonging to or in the possession of the Licensee, its invitees, those for whom the Licensee is responsible in law or any other person or for any matter or things of whatsoever nature or kind arising from or in connection with the Licensee's use and occupation of the Licensed Area or otherwise.

13. Insurance

The Licensee, at its cost, will obtain and keep in force:

- a) All risks property insurance covering all of the Licensee's property in the Licensed Area, property for which the Licensee is legally liable, and property installed by or on behalf of the Licensee within the Licensed Area;
- b) Comprehensive general liability insurance (including legal liability insurance) against claims for personal injury, death or property damage occurring upon, within or about the Licensed Area, such coverage to include the activities and operations conducted by the Licensee and those for whom the Licensee is in law responsible. Such policies will be written on a comprehensive basis with inclusive limits of not less than

\$2,000,000 per occurrence or such higher limit as the City, acting reasonably, may require from time to time; and

- c) Any other form of insurance or such higher limits as the City, acting reasonably, may require from time to time, in form, in amounts and for insurance risks against which a prudent licensee would insure.

The Licensee will affect all insurance policies with reputable insurers licensed to do business in British Columbia and upon terms and in amounts, as to deductibles and otherwise, reasonably satisfactory to the City. The Licensee will deliver to the City within 30 days of the date first written above, and upon reasonable request from time to time, certificates of insurance (and upon request by the City, copies of the insurance policies) and will deliver to the City a certificate of renewal for each policy not less than 10 days prior to its respective expiry date. The Licensee will cause all insurance policies to contain an undertaking by the respective insurer to notify the City at least 30 days prior to cancellation or prior to making any other change material to the City's interest. The liability policy of the Licensee will include the City as an additional named insured with a cross-liability and severability of interest clause. The Licensee will cause all insurance policies to contain a waiver of subrogation clause in favour of the City and those for whom it is in law responsible.

14. Nature of Licence

The occupancy of the Licensed Area by the Licensee will, under all circumstances, be viewed as a licence only and will not create or be deemed to create any interest in the Licensed Area in the Licensee's favour.

15. Assignment

The Licensee will not be entitled to assign or transfer this Licence. The Licensed Area, or any portion thereof, may not be further licensed or leased without the prior written consent of the City, which consent may be withheld in its sole discretion.

16. No Derogation

Nothing contained or implied herein will derogate from the obligations of the Licensee under any other agreement with the City, or if the City so elects, prejudice or affect the City's rights, powers, duties or obligations in the exercise of its functions pursuant to the Community Charter (British Columbia) and the Local Government Act (British Columbia), or any other Act of the legislature of the Province of British Columbia, as amended from time to time and the rights, powers, duties and obligations of the City under all public and private statutes, bylaws, orders and regulations, all of which may be, if the City so elects, as fully and effectively exercised in relation to the Lands and the City as if this Licence had not been executed and delivered by the City to the Licensee.

17. Builders' Liens

The Licensee will not suffer or permit any liens under the Builders' Lien Act to be

registered against title to the Lands, including the Licensed Area, by reason of labour, services or materials supplied to the Licensee. In the event that any lien is so filed, the Licensee will take immediate action to cause same to be removed.

18. Compliance With Laws

The Licensee, at its sole cost and expense, will promptly comply with all applicable requirements of governmental or administrative authorities, including, without limiting the generality of the foregoing, all municipal bylaws, which relate, directly or indirectly, to the use of the Licensed Area.

19. Further Assurances

The parties will execute and deliver all such further documents and do such other things as the other party hereto may request in order for this Licence to be given full effect.

20. Waiver

The waiver by the City of any breach of a term, covenant or condition of this Licence will not be considered to be a waiver of any subsequent breach of the term, covenant or condition or another term, covenant or condition. No breach of a term, covenant or condition of this Licence will be considered to have been waived by the City unless acknowledged by the City in writing as waived.

21. Severance

If any section, subsection, sentence, clause or phrase in the Licence is for any reason held to be invalid by the decision of a court of competent jurisdiction, the invalid portion shall be severed and the decision that it is invalid shall not affect the validity of the remainder of this Licence. The parties hereto shall agree upon an amendment to be made to the section, subsection, sentence, clause or phrase previously found to be invalid and shall do or cause to be done all acts reasonably necessary in order to amend the Licence so as to reflect its original spirit and intent.

22. Notices

Any notice required or permitted to be given hereunder will be in writing and will be sufficiently given if it is delivered personally or mailed by prepaid mail to the intended party at its address set out on page 1 of the Licence. A notice will be deemed to be received on the day it is delivered, if delivered personally, or 4 business days after the date it was mailed.

23. Governing Law

The Licence will be governed by and construed in accordance with the laws of British Columbia and the parties hereby agree to attorn to the courts of British Columbia.

24. Singular and Plural

Wherever the singular or masculine is used herein the same shall be construed as meaning the plural, feminine or the body corporate or politic where the contents or the parties so require.

25. Enurement

The Licence will enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed the Licence as of the day and year first above written:

THE CORPORATION OF THE CITY
OF GRAND FORKS, by its authorized
signatories:

THE LICENSEE, by its
authorized signatories:

Name: Brian Taylor, Mayor

Name:

Name: Daniel Drexler, Corporate Officer

Name:

Plan of Area of Lot 5

PUN >HB.127_

PLAN 34927

chlorine plant

KETTLE

**SUBJECT
PROPERTY**

- denotes standard iron post (up)
- denotes standard iron post (down)
- ⊗ denotes standard rock post (down)

I, A. F. Hoffmann, a British Columbia Land Surveyor of the City of Grand Forks in British Columbia certify that I was present at and personally supervised the survey represented by this plan and that the survey and plan are correct. The survey was completed on the 31st day of September 1939.

A.F. HOEFSLOOT
B.C. Land Surveyor, Canada Lands Surveyor
P.O. Box 2740, Grand Forks, B.C.
Y0H 1H0 442-5597

THE CORPORATION OF THE
CITY OF GRAND Forks



PUBLIC NOTICE
POSTING OF PARCEL FOR PROPOSED
DISPOSITION PURSUANT TO SECTION 26 OF
THE COMMUNITY CHARTER

WHEREAS Section 26 of the Community Charter requires that before Council disposes of land or improvements, it must publish notice of the proposed disposition.

Public Notice is hereby given that Council for the Corporation of the City of Grand Forks proposes to dispose of, by lease, City owned property legally described as Lot 5, Plan KAP17928, DL 534, SDYD, Exclusive of the City's Wastewater Treatment Facility to Roxul Inc. for the annual sum of \$11,080 (+GST) for the Period July 1, 2019 – June 30, 2024.

PROPERTY LOCATION

