Minute No. 445
Report - Standing Policy Committee on Property and Development - June 2, 2009

Item No. 17 **Land Exchange - Chief Peguis Trail Extension - East Of Pipeline Road, West of McPhillips Street**
(Old Kildonan Ward)
eFile FI-2.4.4.1

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the land exchange of "Parcel A and B - Land to be conveyed to the City" and "Parcel C - Land to be conveyed to 74543 Manitoba Corporation" with 74543 Manitoba Corporation or its nominee, at a price of $1.00 as shown on Misc. Plan No. 13264/1 be approved as described in the report of the Winnipeg Public Service dated May 14, 2009, and upon such terms and conditions as may be acceptable to the Acting City Solicitor/Manager of Legal Services and the Director of Planning, Property and Development.

2. That the City-owned lands identified as "Area C - Land to be conveyed to 74543 Manitoba Corporation" as shown on the Misc. Plan No. 13264/1 be declared surplus to the City's needs.

3. That the sources of funding identified in the report of the Winnipeg Public Service dated May 14, 2009, be approved for the acquisition of the subject property**.**

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the execution of any documents related thereto.

Report - Standing Policy Committee on Property and Development - June 2, 2009

DECISION MAKING HISTORY:

Moved by Councillor Fielding,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 10, 2009, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 2, 2009, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

ISSUE: **PROPOSED LAND EXCHANGE – CHIEF PEGUIS TRAIL EXTENSION - EAST OF PIPELINE ROAD, WEST OF MCPHILLIPS STREET**
Lord Selkirk – West Kildonan Community
Old Kildonan Ward

Critical Path: **Standing Policy Committee on Property and Development**
Executive Policy Committee
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
Ray Klassen	Deepak Joshi	M. Ruta	P. Sheegl Deputy CAO

RECOMMENDATIONS

1. That the proposed land exchange of "Parcel A and B - Land to be conveyed to the City" and "Parcel C - Land to be conveyed to 74543 Manitoba Corporation" with 74543 Manitoba Corporation or its nominee, at a price of $1.00 as shown on attached Misc. Plan No. 13264/1 be approved as described herein and upon such terms and conditions as may be acceptable to the Acting City Solicitor/Manager of Legal Services and the Director of Planning, Property and Development.

2. Subject to the approval of Recommendation 1 above, that the City-owned lands identified as "Area C - Land to be conveyed to 74543 Manitoba Corporation" as shown on the attached Misc. Plan No. 13264/1 be declared surplus to the City's needs.

3. That the sources of funding identified herein be approved for the acquisition of the subject property.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

IMPLICATIONS OF THE RECOMMENDATIONS

- In August 2007, the City received a proposal from a representative acting on behalf of 74543 Manitoba Corporation for a proposed land exchange west of McPhillips Street.
- The proposal incorporates privately owned holdings. A portion of these holdings will be required by the City at some future date for the extension of the Chief Peguis Trail.
- The Winnipeg Public Service has negotiated terms and conditions of a land exchange which include City-owned lands commonly known as the former “Bergen Cut-off” land under Public Works jurisdiction.
- The Public Works Department has no objection to the land exchange as negotiated and has advised that adequate funding for this proposed land exchange is available in the Land Acquisition for Future Transportation Purposes capital account.
- The Winnipeg Public Service has determined that the former “Bergen Cut-off” land in question is not required for civic purposes.
- The proposed land exchange agreement is equitable and complies with the Council adopted policy concerning unsolicited offers insofar as a portion of the privately owned land in question is required for a public use and to facilitate a Council approved land acquisition program.
- No environmental issues are anticipated. However, as a precaution, the proposed transaction contains terms that protect the City’s interests regarding environmental matters.
- The Department is seeking approval of the terms and conditions of a land exchange agreement as negotiated.

HISTORY

In August 2007, the City received a proposal from a representative acting on behalf of 74543 Manitoba Corporation for a proposed land exchange east of Pipeline Road and west of McPhillips Street.

At some future date, the City will require a portion of the "74543 Manitoba Corporation Lands" as public street right of way to extend the Chief Peguis Trail west of McPhillips Street. Ensuing negotiations between the Winnipeg Public Service and 74543 Manitoba Corporation have produced an agreement to a proposed land exchange. The proposed terms and conditions of said agreement are attached hereto.

74543 Manitoba Corporation owns property outlined in a heavy black line on the attached Misc. Plan No. 13264/1 immediately adjacent and north of the vacant City-owned property. The City-owned property is under Public Works jurisdiction.

The Planning, Property and Development Department has determined that there is no civic need for the City-owned property commonly known as the former "Bergen Cut-off" lands identified as "Parcel C – City land to be conveyed to 74543 Manitoba Corporation" on the attached Misc. Plan No. 13264/1. The Department considers the land exchange to be equitable since "Parcel C – City land to be conveyed to 74543 Manitoba Corporation" and the combined "Parcel A and Parcel B - Land to be conveyed to the City" on the attached Misc. Plan No. 13264/1 each are valued at approximately ninety five thousand dollars ($95,000). The associated terms and conditions are considered reasonable and consistent with other land exchanges negotiated by the City.

In view of the fact that there is no civic need for the City-owned lands identified as "Parcel C – City land to be conveyed to 74543 Manitoba Corporation" on the attached Misc. Plan No. 13264/1, the Winnipeg Public Service is recommending that the property be declared surplus to the City's requirements and that the property be included in the land exchange agreement as negotiated. The Public Works Department has no objection to the proposed land exchange agreement as negotiated.

It should be noted, that in order to facilitate this proposal and land exchange, a Plan Winnipeg Amendment of both the "74543 Manitoba Corporation Property" and the City owned lands identified as "Parcel C – City land to be conveyed to 74543 Manitoba Corporation" on the attached Misc. Plan No. 13264/1 was required to amend the existing "Rural Policy Area" to a "Neighbourhood Policy Area" designation north to the future public right-of-way road allowance. In 2008, appropriate public hearings were scheduled and consideration was given to the proposal to amend Plan Winnipeg…2020 Vision with By-law No. 7630/2000 which re-designated the lands to "Neighbourhood Policy Area". The Plan Winnipeg amendment was supported and on March 25, 2009 was adopted and received its third reading by Council.

This report seeks the approval of the Standing Policy Committee on Property and Development of the terms and conditions of the land exchange agreement and to recommend to Council the approval of said terms and conditions, as negotiated, and that the City-owned land identified as "Parcel C – City land to be conveyed to 74543 Manitoba Corporation" on the attached Misc. Plan No. 13264/1 be deemed surplus to the City's needs.

FINANCIAL IMPACT

Financial Impact Statement **Date:** **May 14, 2009**

Project Name:

PROPOSED LAND EXCHANGE – CHIEF PEGUIS TRAIL EXTENSION - EAST OF PIPELINE ROAD, WEST OF MCPHILLIPS STREET

COMMENTS:

Other than the nominal consideration of $1, there are no financial implications associated witht the recommendations contained in this report.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this Report there was consultation with:

Public Works Department
Corporate Support Services Department – Legal Services (as to legal issues)

SUBMITTED BY

Planning, Property and Development Department
Real Estate Division
Prepared by: Sara Cianflone
Date: May 14, 2009
File No. 8730

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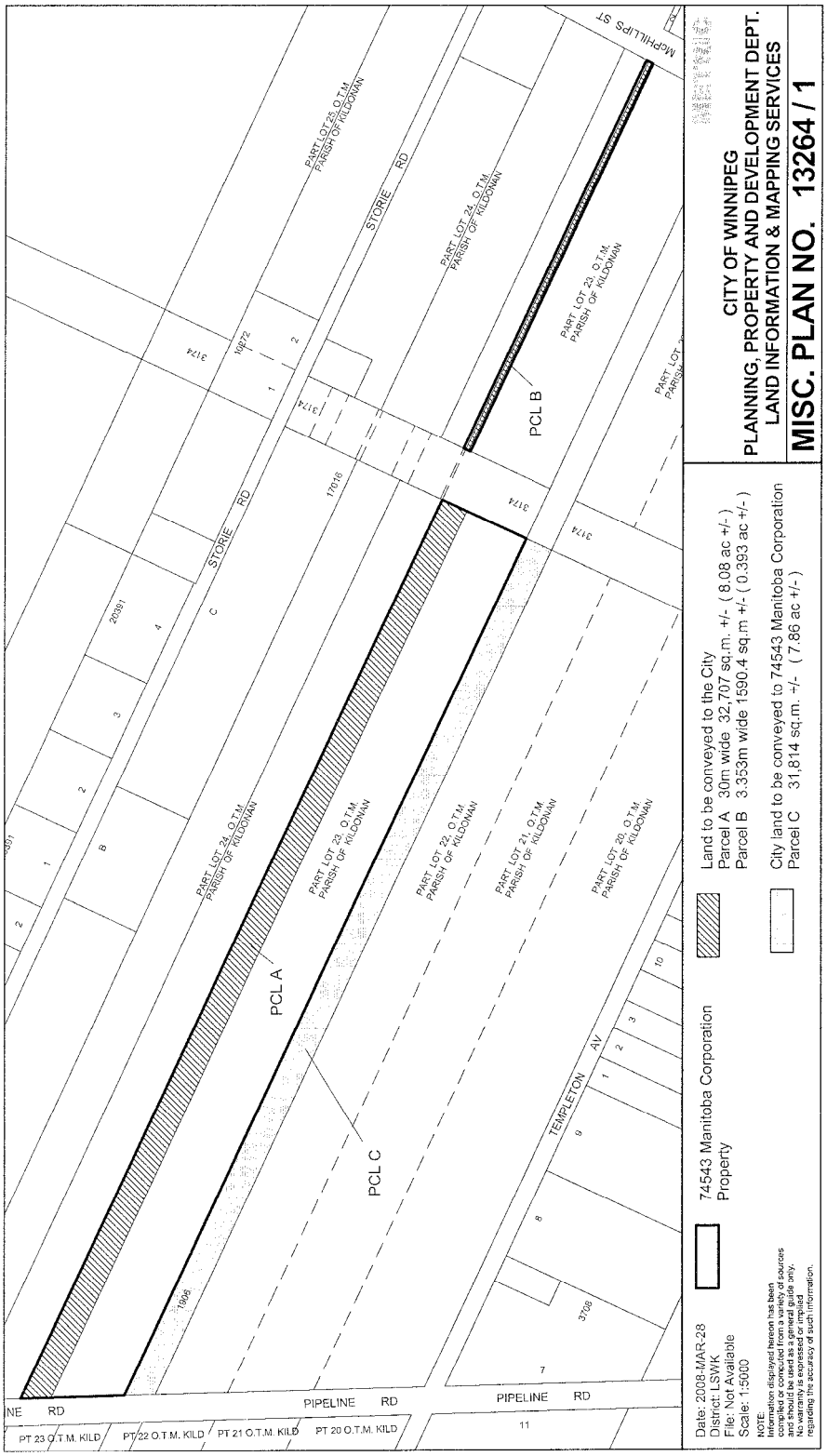

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13264 / 1
PCL A
PCL B
PCL C
STORIE RD
PIPELINE RD
TEMPLETON AV
McPHILLIPS ST
PART LOT 25, O.T.M. PARISH OF KILDONAN
PART LOT 24, O.T.M. PARISH OF KILDONAN
PART LOT 23, O.T.M. PARISH OF KILDONAN
PART LOT 22, O.T.M. PARISH OF KILDONAN
PART LOT 21, O.T.M. PARISH OF KILDONAN
PART LOT 20, O.T.M. PARISH OF KILDONAN
PT 23 O.T.M. KILD
PT 22 O.T.M. KILD
PT 21 O.T.M. KILD
PT 20 O.T.M. KILD
Land to be conveyed to the City
Parcel A 30m wide 32,707 sq.m. +/- (8.08 ac +/-)
Parcel B 3.353m wide 1590.4 sq.m +/- (0.393 ac +/-)
City land to be conveyed to 74543 Manitoba Corporation
Parcel C 31,814 sq.m. +/- (7.86 ac +/-)
74543 Manitoba Corporation Property
Date: 2008-MAR-28
District: LSWK
File: Not Available
Scale: 1:5000
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.

THIS AGREEMENT made in duplicate the day of , 2008.

BETWEEN:

THE CITY OF WINNIPEG,
(hereinafter called ***"City"***),

OF THE FIRST PART,

- and -

74543 Manitoba Corporation
duly registered to carry on business in Manitoba,
(hereinafter called ***"74543 Man. Corp."***),

OF THE SECOND PART.

WHEREAS the City is the registered owner of the land comprising approximately 7.86± acres shown shaded and identified as ***"Parcel C – City Land to be conveyed to 74543 Manitoba Corporation"*** on Misc. Plan No. 13264/1 attached hereto as Schedule "A" (hereinafter called ***"Parcel C"***);

AND WHEREAS 74543 Man. Corp. wishes to acquire Parcel C for consolidation with its adjoining land for development purposes;

AND WHEREAS the City is prepared to convey Parcel C to 74543 Man. Corp. for consolidation with its adjacent 74543 Man. Corp. property, upon certain conditions as hereinafter set forth;

AND WHEREAS 74543 Man. Corp. is entitled to be the registered owner of certain land comprising approximately 8.473± acres shown hatched and identified as ***"Parcel A and Parcel B - Land to be conveyed to the City"*** on Misc. Plan No. 13264/1 (hereinafter called ***"Parcel A"*** and ***Parcel "B"*** respectively);

AND WHEREAS the City wishes to acquire Parcel A and Parcel B for the purposes of the proposed Chief Peguis Trail Extension;

AND WHEREAS 74543 Man. Corp. has agreed to convey Parcel A and Parcel B to the City upon certain conditions as hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT in consideration of the premises and the covenants herein, the parties agree, each with the other, as follows:

1. The preamble hereto shall and does form an integral part of this Agreement.

2. 74543 Man. Corp. will purchase Parcel C as shown shaded on Misc. Plan No. 13264/1 for the sum of **ONE ($1.00) DOLLAR**, plus applicable Goods and Services Tax.

3. The City will purchase Parcel A and Parcel B as shown hatched on Misc. Plan No. 13264/1 for the sum of **ONE ($1.00) DOLLAR,** plus applicable Goods and Services Tax.

4. Parcel C shall be conveyed to 74543 Man. Corp. by the City free and clear of any and all registered encumbrances and any and all leasehold interests, except the caveat referred to in clause 6 hereof, any public utility caveats and any other encumbrance that may be registered through, by or against 74543 Man. Corp.

5. Parcel A and Parcel B shall be conveyed to the City by 74543 Man. Corp. free and clear of any and all registered encumbrances and any and all leasehold interests, except the caveat referred to in clause 6 hereof, any public utility caveats and any other encumbrance that may be registered through, by or against the City.

6. (a) 74543 Man. Corp. may register and maintain a caveat against Parcel A and Parcel B to ensure the performance of the covenants on the part of the City herein set forth, and the City agrees to grant and does hereby grant to 74543 Man. Corp. an interest in Parcel A and Parcel B according to the tenor of this Agreement;

   (b) The City may register and maintain a caveat against Parcel C to ensure the performance of the covenants on the part of 74543 Man. Corp. herein set forth, and 74543 Man. Corp. agrees to grant and does hereby grant to the City an interest in Parcel C according to the tenor of this Agreement.

7. The date for vacant possession (free of leasehold interest) and tax adjustments in respect of Parcel A and Parcel B, and Parcel C shall be the date one-hundred and twenty (120) days from approval of this transaction by the City of Winnipeg Council or as otherwise agreed to by the parties (hereinafter called the ***"closing date"***).

8. 74543 Man. Corp. shall pay as an adjustment an amount equal to the total of such taxes, rates and charges which would have been levied or charged against Parcel C as though Parcel C had been entered on the assessment rolls of the City as privately owned and subject to taxation, which adjustment shall be calculated from the closing date to and including the last day of the current taxation year.

9. The parties are providing no warranty or representation of any kind related to the condition of Parcel A and Parcel B, and Parcel C or developability of such lands. Each party must rely upon its own investigations and must satisfy itself as to the suitability of the subject lands for its needs. For greater certainty and without limiting the generality of the foregoing, both 74543 Man. Corp. and the City respectively acknowledge and accept the facts that both Parcel A and Parcel B, and Parcel C each are situated adjacent to lands which may have a history of industrial uses, thus, either or both parcels of land may contain environmental contaminants and, in this regard, the term *"caveat emptor"* applies to the fullest extent.

10. Each party shall accept from the other Parcel A and Parcel B, or Parcel C, as the case may be, in an "as is" condition, each party relying on their own personal inspections of the respective lands, independent of any representations made by or on behalf of the other party. Any error or discrepancy in the description or dimensions of the lands as contained herein shall not entitle the parties to any compensation in respect thereof, nor will it entitle the parties to cancellation of this transaction.

11. No real estate commissions are payable in respect of these transactions.

12. The parties hereto agree, each with the other, as follows:

    (a) The exact boundaries and area of Parcel A and Parcel B, and Parcel C shall be fixed and set by a plan (herein called ***"the plan"***) which 74543 Man. Corp. does hereby covenant and agree that it shall, at its sole cost, effort and expense, cause to be prepared and deposited at the Winnipeg Land Titles Office to properly secure title to Parcel A and Parcel B for the City, Parcel C for 74543 Man. Corp., and consolidation of Parcel C and the residual portion of the 74543 Man. Corp. property after conveyance of Parcel A and Parcel B to the City, as herein contemplated;

    (b) 74543 Man. Corp. hereby acknowledges and agrees that it shall, at its sole cost, effort and expense, ensure that:

        (i) if Parcel A and Parcel B are, at closing, subject to any existing mortgage(s), lien(s), builders' lien(s) or judgment(s), 74543 Man. Corp. shall and does hereby undertake to provide to the City at no charge to the City, all required documentation so as to ensure that such mortgage(s), lien(s), builders' lien(s) or judgment(s) is/are fully discharged from Parcel A and Parcel B prior to conveyance of Parcel A and Parcel B to the City and Parcel C to 74543 Man. Corp. as herein contemplated;

(ii) pay to the City upon demand so to do, any costs incurred by the City directly related to the consolidation of Parcel C and the residual 74543 Man. Corp. property including without limiting the generality of the foregoing, land transfer tax as may be applicable to Parcel C and registration fees for documentation which may be required to be provided to the City by 74543 Man. Corp. in compliance with sub-clause 12(b)(i) above;

(iii) the residual 74543 Man. Corp. property and Parcel C are to be considered as ***"consolidated lands"*** to constitute a single and indivisible parcel; and

(iv) henceforth, no further subdivision or conveyance or disposition of any part of the consolidated lands shall be carried out without making application to the City for approval of the subdivision of the consolidated lands or any part thereof;

(c) In addition to such costs and expenses as hereinbefore identified, each party shall be solely responsible for all costs incurred by them in meeting their respective obligations as are herein contained, including without limiting the generality of the foregoing, professional and legal fees, disbursements, land transfer tax and any and all applicable taxes.

13. 74543 Man. Corp. shall be entitled within sixty (60) days from the date of approval of this transaction by City Council, (hereinafter called the ***"due diligence period"***), to:

(a) Conduct or cause to be conducted an Environmental Site Assessment of Parcel C. Should 74543 Man. Corp. conduct such Environmental Site Assessment, 74543 Man. Corp. shall provide copies of such Environmental Site Assessment and/or Report(s) concerning soil testing of Parcel C to the City for its own use, at no cost to the City;

(b) Inspect or investigate Parcel C, the title thereto, the permitted encumbrances, any tenancies and all other matters material to the proposed use of the City Land and further, on the express understanding that it is relying solely upon its own independent inquiries and investigations and the advice of its own consultants and there are no representations, warranties, guarantees, conditions, collateral agreements, covenants and agreements except those expressly set forth herein;

If it is determined as a result of such inspections and investigations that contamination levels exceed Provincial Environmental Standards for the intended use of Parcel C or Parcel C is not suitable for 74543 Man. Corp's intended use of Parcel C and documentation to that effect is produced to the City within the due diligence period, 74543 Man. Corp, at its sole option, shall be entitled to cancel this Agreement;

AND FURTHER, in the event that 74543 Man. Corp. fails to provide such documentation as aforesaid, 74543 Man. Corp. shall complete the land exchange as herein contemplated and shall indemnify and save harmless the City from and against any and all claims arising from or in any way attributable to the existence of contaminants of any kind whatsoever at, in or upon Parcel C.

14. In the event that this Agreement shall be cancelled pursuant to clause 13 hereof, 74543 Man. Corp. shall restore Parcel C to the same condition as prior to its entering in or upon the same in pursuance of clause 13.

15. During the due diligence period, 74543 Man. Corp. shall indemnify and save harmless the City from and against any and all expenses, costs, claims, demands, actions, causes of action, suits or other proceedings whatsoever, arising out of the work done in pursuance of the Environmental Site Assessment, by 745423 Man. Corp. or any person, firm or corporation whether to real or personal property, wheresoever situated, or by any member, employee, agent, licensee, invitee, tenant or third party, whether claiming through or under 74543 Man. Corp. or otherwise, caused by reason of or in any way attributable to use of Parcel C and regardless of whether there is or was any negligence on the part of the City, its servants, employees, agents or otherwise. Without limiting the generality of the foregoing, such indemnity shall include any expenses, costs, claims, demands or actions arising out of injury or death to persons or animals who or which gain access to Parcel C as a result of the said Environmental Site Assessment. Claims referred to herein shall include any awards made against the City under any statute for the protection of workmen.

16. The City shall be entitled within sixty (60) days from the date of approval of this transaction by City Council, (hereinafter called the ***"due diligence period"***), to:

    (a) Conduct or cause to be conducted an Environmental Site Assessment of Parcel A and Parcel B. Should the City conduct such Environmental Site Assessment, it shall provide copies of such Environmental Site Assessment and/or Report(s) concerning soil testing of Parcel A and Parcel B to 74543 Man. Corp. for its own use, at no cost to 74543 Man. Corp.;

(b) Inspect or investigate Parcel A and Parcel B, the title thereto, the permitted encumbrances, any tenancies and all other matters material to the proposed use of Parcel A and Parcel B and further, on the express understanding that it is relying solely upon its own independent inquiries and investigations and the advice of its own consultants and there are no representations, warranties, guarantees, conditions, collateral agreements, covenants and agreements except those expressly set forth herein;

If it is determined as a result of such inspections and investigations that contamination levels exceed Provincial Environmental Standards for the intended use of Parcel A and Parcel B, or Parcel A and Parcel B are not suitable for the City's intended use of Parcel A and Parcel B and documentation to that effect is produced to 74543 Man. Corp. within the due diligence period, the City, at its sole option, shall be entitled to cancel this Agreement;

AND FURTHER, in the event that the City fails to provide such documentation as aforesaid, the City shall complete the land exchange as herein contemplated and shall indemnify and save harmless 74543 Man. Corp. from and against any and all claims arising from or in any way attributable to the existence of contaminants of any kind whatsoever at, in or upon Parcel A and Parcel B.

17. In the event that this Agreement shall be cancelled pursuant to clause 16 hereof, the City shall restore Parcel A and Parcel B to the same condition as prior to its entering in or upon the same in pursuance of clause 16.

18. During the due diligence period, the City shall indemnify and save harmless 74543 Man. Corp. from and against any and all expenses, costs, claims, demands, actions, causes of action, suits or other proceedings whatsoever, arising out of the work done in pursuance of the Environmental Site Assessment, by the City or any person, firm or corporation whether to real or personal property, wheresoever situated, or by any member, employee, agent, licensee, invitee, tenant or third party, whether claiming through or under the City or otherwise, caused by reason of or in any way attributable to the City's use of Parcel A and Parcel B and regardless of whether there is or was any negligence on the part of 74543 Man. Corp., its servants, employees, agents or otherwise. Without limiting the generality of the foregoing, such indemnity shall include any expenses, costs, claims, demands or actions arising out of injury or death to persons or animals who or which gain access to Parcel A and Parcel B as a result of the said Environmental Site Assessment. Claims referred to herein shall

include any awards made against 74543 Man. Corp. under any statute for the protection of workmen.

19. 74543 Man. Corp. shall consent on a Real Owner Application form similar to that attached hereto as Schedule "B" to add the City as the real owner of Parcel A and Parcel B and the City shall consent on a Real Owner Application form similar to that attached hereto as Schedule "B1" to add 74543 Man. Corp. as the real owner of Parcel C on the assessment rolls of the City.

20. Each of the parties hereto will self-assess any Goods and Services Tax payable on this proposed transaction. The City's GST Registrant Number is R121682967. The Purchaser's GST Registrant Number is _____.

21. Time shall be in every aspect and particular of the essence of this Agreement, which shall enure to the benefit of and be binding upon the parties hereto and their successors and assigns and successors in title to the lands affected thereby.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

THE CITY OF WINNIPEG

Per: _____
for DIRECTOR of Planning, Property and Development

74543 MANITOBA CORPORATION

Per: _____
Name:
Title:
(affix corporate seal)

Witness:
Name: LK HENDERSON
(please print)
Address: 333 Lindenwood Dr E Winnipeg R3P 2H1

Per: _____
Name:
Title:

Approved:

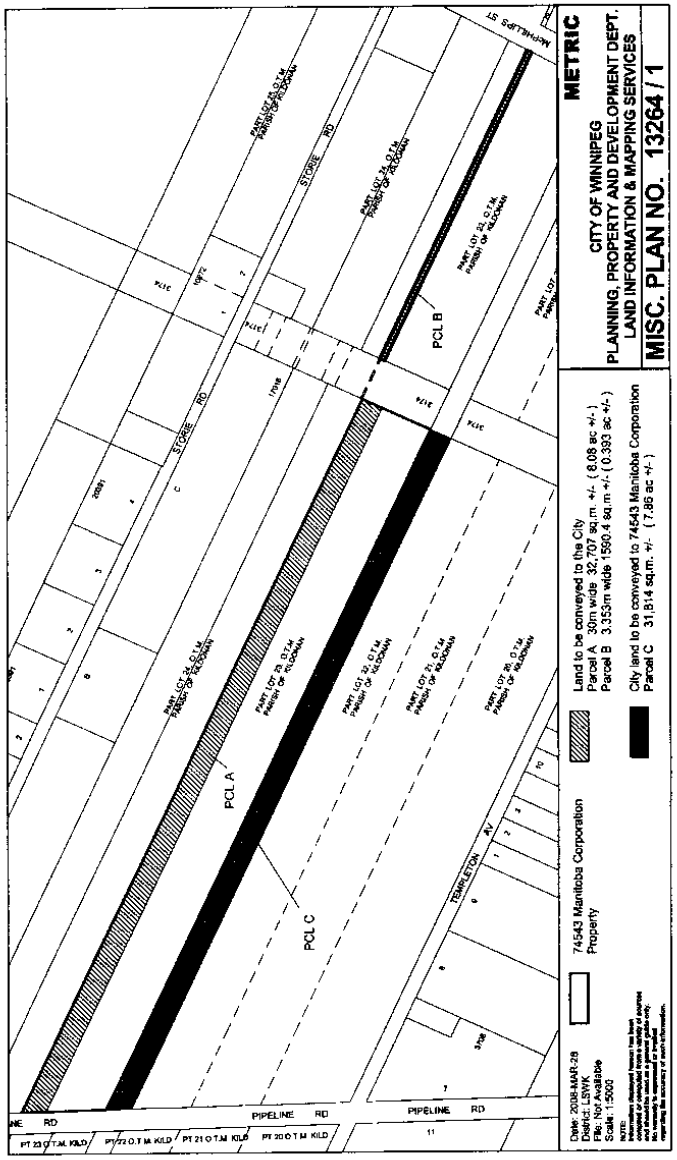
_____
Planning, Property and Development Department

Approved:

_____
for Director of Public Works

Certified as to form:

_____


METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13264 / 1
Land to be conveyed to the City
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74543 Manitoba Corporation Property
Date: 2008-MAR-28
District: LSWK
File: Not Available
Scale: 1:5000
PCL A
PCL B
PCL C
STORIE RD
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McPHILLIPS ST