Minute No. 610
Report - Standing Policy Committee on Property and Development – October 8, 2009

Item No. 15 **Encroachment Agreement - St. Mary's Road Right-of-Way – 5712239 Manitoba Corp.**
(St. Vital Ward)
eFile ED(35)

COUNCIL DECISION:

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

1. That the Encroachment Agreement in favour of the 5712239 Manitoba Corp. Inc. be approved in accordance with the terms and conditions as outlined in the report of the Winnipeg Public Service dated September 24, 2009.

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

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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 October 21, 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 October 8, 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: **To Seek Committee Approval for the Proposed Encroachment Agreement for the Development and Maintenance of Parking Stalls Encroaching onto the St. Mary's Road Right-of-Way – 5712239 Manitoba Corp.**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Klassen	D. Joshi	N/A	P. Sheegl, Deputy CAO

RECOMMENDATIONS

1. That the proposed Encroachment Agreement in favour of the 5712239 Manitoba Corp. Inc. be approved in accordance with the proposed terms and conditions as attached.

2. 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 accordance with the Council Order of July 18, 1979, the Standing Policy Committee on Property and Development shall authorize the leasing or rental of City properties for which the Director of Planning, Property and Development Department has no authority. In this regard, the Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement, in favor of 5712239 Manitoba Corp., for the development and ongoing maintenance of parking stalls within the St. Mary's Right-of-Way.

- The Department has determined that there is no general, policy, regulatory, environmental, human resource or financial implications to the Encroachment Agreement of this land as outlined in the attached Miscellaneous Plan No. 13614.

- 5712239 Manitoba Corp. wishes to enter into an Encroachment Agreement for the development and ongoing maintenance of parking stalls within the St. Mary's Road Right-of-Way.

HISTORY

- Thomas Design Builders, on behalf of 5712239 Manitoba Corp., submitted an encroachment application to the Planning, Property and Development Department for the development and ongoing maintenance of parking stalls encroaching onto the St. Mary's Road Right-of-Way.

- The application was circulated to various City departments and public utilities for consideration and comments. No objections were received for the development and ongoing maintenance of the parking stalls.

- The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of 5712239 Manitoba Corp. to develop and maintain the parking stalls within the St. Mary's Road Right-of-Way.

- The Public Works Department has no objection to the proposed encroachment, subject to the conditions as noted on Schedule 'A'.

- The Corporate Finance Department, Risk Management Branch, reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the proposed terms and conditions.

- This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement **Date:** September 21, 2009

Project Name: **First Year of Program 2009**

Proposed Encroachment Agreement for the Development and Maintenance of Parking Stalls Encroaching onto the St. Mary's Road Right-of-Way – 5712239 Manitoba Corp.

	2009	2010	2011	2012	2013
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	333	330	330	330	330
Net Cost/(Benefit)	$ (333)	$ (330)	$ (330)	$ (330)	$ (330)
Less: Existing Budget Amounts	(333)	(330)	(330)	(330)	(330)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2009 consist of the $330 annual fee prorated for the Oct. 1 commencement date + a one-time admin fee of $250. Revenues from 2010 onward represent the full amount of the annual fee.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this Report there was consultation with:

Corporate Finance Department
Public Works Department
Internal Services, Legal Services Division

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by	Maxine Clayton
Date:	September 24, 2009
File No.	8886

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SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR ENCROACHMENT AGREEMENT TO ESTABLISH PARKING STALLS AT 1105 ST. MARY'S ROAD, ENCROACHING ONTO THE RIGHT-OF-WAY AT ST. MARY'S ROAD AND DAKOTA STREET – 5712239 MANITOBA CORP.

Use:	Development and Maintenance of parking stalls
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 13614 attached.
Term:	Annual Continuing, commencing October 1, 2009.
Rental:	$330.00 per annum, plus GST, computed on the basis of the fees outlined in the City of Winnipeg encroachment By-Law No. 692/74 and amendments thereto, in event that the By-law is amended changing the fees charged for encroachments the rental paid under this agreement shall be adjusted accordingly, plus an initial administrative fee of $250.00 plus GST.
Insurance:	**Phase 1 – Construction and Development**:

The Developer (5071321 Manitoba Ltd.) shall ensure that any contractor and sub-contractor hired to perform Work shall provide and maintain the following insurance coverage:

- Commercial general liability insurance in the amount of at least two million dollars ($2,000,000) inclusive, with The City of Winnipeg and the Developer (5071321 Manitoba Ltd.) to be added as an additional insured, cross liability clause, contractual liability, unlicensed motor vehicle ability, non-owned automobile and products and completed operations cover to remain in place at all times during the performance of the Work;

- Automobile liability insurance for owned automobiles used for or in connection with the Work in the amount of at least $2,000,000 to be in place at all times during the performance of the Work;

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- Deductibles shall be borne by the Contractor;

- The Contractor shall provide the City with a certificate of insurance of each policy, in a form satisfactory to the City of Winnipeg at least 2 business days prior to the commencement of any Work on the Site;

- The Contractor shall provide the City with a certificate of insurance of each policy to lapse without providing at least 15 day calendar days written notice;

- Any certificates of insurance should be sent to: The City of Winnipeg, Risk Management Division, 3rd Floor, 185 King Street, Winnipeg, MB R3B 1J1. Attention: E. Martin, Supervisor of Insurance and Risk Financing Phone: 986-5252 Fax 986-6132 Email: emartin@winnipeg.ca

Phase 2 – Maintenance and Operation

- During the construction and maintenance phase (after construction) the Developer shall provide and maintain the following insurance coverage:
- Commercial general liability insurance, in an amount of at least $2,000,000 inclusive, such liability policy to add The City of Winnipeg as an additional insured, cross liability clause, provision to provide 15 days written notice of termination/cancellation;
- All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;
- Deductibles shall be borne by the Developer;
  The Developer shall file with the City an annual certificate of insurance in a form satisfactory to the City Solicitor;
- The City shall have the rights to alter the limits and/or coverages as reasonably required from time to time during the continuance of the encroachment agreement and any subsequent renewal thereof; provided that the City shall give the Lessee reasonable notice and request reasonable change;

Cancellation: Ninety (90) days written notice.

Conditions: That the approval of this application by the Designated Officer – Encroachments is only valid for a period of six (6) months from the date of said approval unless the

applicant enters into an Encroachment Agreement with the City of Winnipeg within the stated time frame, or alternatively obtain an extension of time from the Designated Officer – Encroachments;

That all utilities be permitted to enter the area for maintenance, repair or installation of services at anytime without notice to the applicant and that any removal or relocation of existing facilities as a result of the proposed application will be at the expense of the applicant and that prior to any digging or excavation, Manitoba Hydro and Centra Gas Manitoba Inc. advise the applicant contact the Call-Before-You-Dig line at 480-1212;

That extreme caution be used when excavating in the vicinity of MTS buried plant and that the applicant contact the Buried Plant Location Services at 941-7267, 48 hours prior to excavation for further confirmation in the field;

The revisions outlined in a letter from Thomas Design Builders Ltd. to the Public Works Department dated July 13, 2009, and on Thomas Design Builders Ltd. drawing, 'DRI' revised July 13, 2009 be adhered to;

The new proposed grades allow for almost 70% of the site to drain through the approaches out onto both St. Mary's Road and Dakota Street. The remainder of the lot drainage discharges into the owner's landscaping at the north side of the property. The landscaping will be shrubs set in clean rock landscape beds.

That all applicable permits be obtained prior to any development.

The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the City's Standing Committees and Council and to the City Solicitor as to form and content.

5712239 MANITOBA CORP. ACKNOWLEDGES AND AGREES WITH THE ABOVE TERMS AND CONDITIONS.

TITLE: _____ Sept 16, 09 **DATE**

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