Minutes - Executive Policy Committee – July 14, 2010

Minute No. 440
Report - Standing Policy Committee on Property and Development – July 6, 2010

Item No. 25 **Land Exchange – City-owned Property - North side of Wilkes Avenue at its Western Termini, for the Privately-owned Property located North of Lemay Avenue**
(St. Norbert Ward)
eFile FI-2.4.4.1

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That the land exchange of City-owned property located on the north side of Wilkes Avenue at its western termini for the privately-owned "Villa Maria" property located north of Lemay Avenue be approved in accordance with the terms and conditions of the Offer to Purchase dated May 10, 2010, contained in the report of Winnipeg Public Service dated June 22, 2010..

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

Report - Standing Policy Committee on Property and Development – July 6, 2010

DECISION MAKING HISTORY:

Moved by Councillor Steeves,

That the recommendation of the Standing Policy Committee on Property and Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On July 6, 2010, 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 Obtain Council Approval of a Land Exchange – City-owned Property located on the North side of Wilkes Avenue at its Western Termini, for the Privately-owned "Villa Maria" Property located North of Lemay Avenue**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Thorgrimson	D. Joshi	J Ferrier, Acting CFO	P Sheegl, Deputy CAO

RECOMMENDATIONS

1. That the proposed land exchange of City-owned property located on the north side of Wilkes Avenue at its western termini for the privately-owned "Villa Maria" property located north of Lemay Avenue be approved in accordance with the terms and conditions of the attached Offer to Purchase, dated May 10, 2010.
2. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

On June 2, 2009, the Standing Policy Committee on Property and Development concurred in the recommendation of the Riel Community Committee and requested the Winnipeg Public Service to investigate the possibility of negotiating a land exchange of the privately-owned ecologically significant "Villa Maria" land located north of Lemay Avenue adjacent to the Red River in St. Norbert for the City land located on the north side of Wilkes Avenue at its western termini.

The Planning, Property and Development Department has concluded its negotiations with 5185603 Manitoba Ltd. for a land exchange of City-owned property located on the north side of Wilkes Avenue at its western termini for the privately-owned "Villa Maria" property located north of Lemay Avenue. Council approval is required for the proposed exchange.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no regulatory or human resources implications associated with this report.

The City's standard terms and conditions of sale will include provisions to protect the City's interests in the event that environmental contamination is discovered.

Market value for the Applicant's property is $41,000.00 greater than market value for the subject City-owned property. Therefore, the Department has negotiated with the Applicant, that it would pay $41,000.00 towards the Trunk Service Rate (TSR) charges that will be applicable upon development of the Wilkes Avenue property. The Department will pay the $41,000.00 once the Villa Maria property is sold for development purposes at some point in the future.

HISTORY

City of Winnipeg Property - North Side of Wilkes Avenue at its Western Termini (Misc. Plan 7546/6)

A portion of the subject City-owned property (Part Lot A, Plan 1374) was acquired in 1973 for future transportation purposes. The balance of the subject City-owned property (Parcel E, Plan 27780) was acquired by the City prior to 1957.

Over the years, the City has received several requests to purchase the subject City-owned property. However, it was determined to be in the City's best interest to retain it for possible future street improvement.

In 1991, the northeast corner of Kenaston Boulevard and Wilkes Avenue was opened to provide a right turn lane for westbound traffic turning off Wilkes Avenue onto Kenaston Boulevard. Through ensuing years, the City received several expressions of interest to purchase the property at this intersection; however, the property was still required for the railway detour and equipment storage during the construction of the Kenaston Boulevard Grade Separation at the CNR Rivers Subdivision (Mainline), and was not to be sold or leased until the completion of the project.

In 2007, a triangular portion of the subject property at the intersection of Kenaston Boulevard at Wilkes Avenue was opened to provide for a turn-around at this intersection. Westbound Wilkes Avenue traffic could no longer access Kenaston Boulevard.

On September 26, 2007, Council concurred in the recommendation of the Standing Policy Committee on Property and Development that the City-owned property shown outlined on Misc. Plan 7546/6 be declared surplus and made available for sale.

Details of the subject City-owned property are as follows:

Location:	North side of Wilkes Avenue, East of Kenaston Boulevard, shown outlined on Misc. Plan No. 7546/6
Legal Description:	Part Parcel A, Plan 1374 and Parcel E Plan 27780
Zoning:	M2 – Industrial District

Size: 14,625 m² (3.614 acres)
Market Value: $359,000.00 (as if fully serviced)

It was the intention of the Department to market the subject City-owned property on the open market. However, pursuant to further review it was determined that any prospective purchaser would be required to install extensive services within Wilkes Avenue in order to service the subject property. Currently there is a 300mm watermain and two water feedermains in Wilkes Avenue fronting the subject property. However, there is no wastewater sewer or land drainage sewer fronting the property. The wastewater sewer currently ends approximately 70 metres east of the property and the land drainage sewer ends at Lorimer Boulevard. As such, the developer of this property would be required to extend the two sewers, at its cost.

Privately-owned Property – "Villa Maria" Land Located North of Lemay Avenue adjacent to the Red River in St. Norbert (Misc. Plan 13213/2)

This privately-owned property was purchased on July 6, 2006 by 5185603 Manitoba Ltd. as a part of its acquisition of the Villa Maria holdings at 100 Place Villa Maria. The purchase included the Villa Maria Centre and vacant lands all located at the rear of residential properties on the north side of Lemay Avenue in St. Norbert on the Red River.

5185603 Manitoba Ltd. has proposed to sell the riverbank lands to the City of Winnipeg for public reserve and to redevelop the remaining 22.5 acres into a residential subdivision.

At this time, the privately-owned property is considered non-buildable along the west bank of the Red River, as it is within the floodway area. This property is irregular in shape as it "dog legs" due to the curve in the Red River. The site area is approximately 34.40 acres or 13.92 hectares. It is separated from the remainder of the Villa Maria lands by a dike on a parcel of land owned by the City.

Although the subject privately-owned property is considered below bank property, the City Naturalist has indicated that forested area is a valuable habitat.

The Department has completed its negotiations with the owner of the privately-owned "Villa Maria" property and is recommending that the exchange of City-owned property located on the north side of Wilkes Avenue at its western termini, as shown on the attached Misc. Plan No. 7546/6, for the privately-owned "Villa Maria" property located north of Lemay Avenue, as shown on the attached Misc. Plan 13213/2, be approved in accordance with the terms and conditions of the attached Offer to Purchase, dated May 10, 2010.

The Department supports the proposed exchange of lands for the following reasons:

- The Ward Councillor is supportive of the proposed exchange of lands.
- There would be limited interest in purchasing the City-owned property on Wilkes Avenue, as a proposed purchaser would be required to install and pay for the cost of servicing the subject property, estimated at over $400,000.00.
- The City-owned property will generate tax revenues at the closing of the proposed exchange.
- The sale will eliminate the liability for the City associated with holding this property.

- The City will acquire valuable habitat river property to be used for park purposes pending future development opportunities.

FINANCIAL IMPACT

Financial Impact Statement **Date:** June 18, 2010

Project Name:

Land Exchange – City-owned Property located on the North side of Wilkes Avenue at its Western Termini, for the Privately-owned "Villa Maria" Property located North of Lemay Avenue

COMMENTS:

The recommendations contained in this report include that the proposed land exchange of City-owned property located on the north side of Wilkes Avenue at its western termini for the privately-owned "Villa Maria" property located north of Lemay Avenue be approved in accordance with the terms and conditions of the attached Offer to Purchase, dated May 10, 2010.

The terms and conditions include a provision that the City of Winnipeg shall apply $41,000, which constitutes the difference in value between the City land (i.e. Wilkes Avenue property) and the Applicant's land (i.e. Villa Maria property), toward Trunk Service Rates (TSR) that will be payable upon development of the Wilkes Avenue property. This payment will be applied upon the sale of the Villa Maria lands, such payment to be made from the proceeds of dispositon.

The financial impact of the recommendations will be recognized upon development of the Wilkes Avenue property. As the timing of any development is not known at this time, there is no immediate financial impact associated with the recommendations contained in this report. At some point in the future, the TSR's account will be credited the $41,000 with an offsetting charge to the Land Operating Reserve.

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

CONSULTATION

In preparing this report there was consultation with:

N/A

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Real Estate
Prepared by:	Joedi Pruden
Date:	June 22, 2010
File No.	32/4439 and 4280

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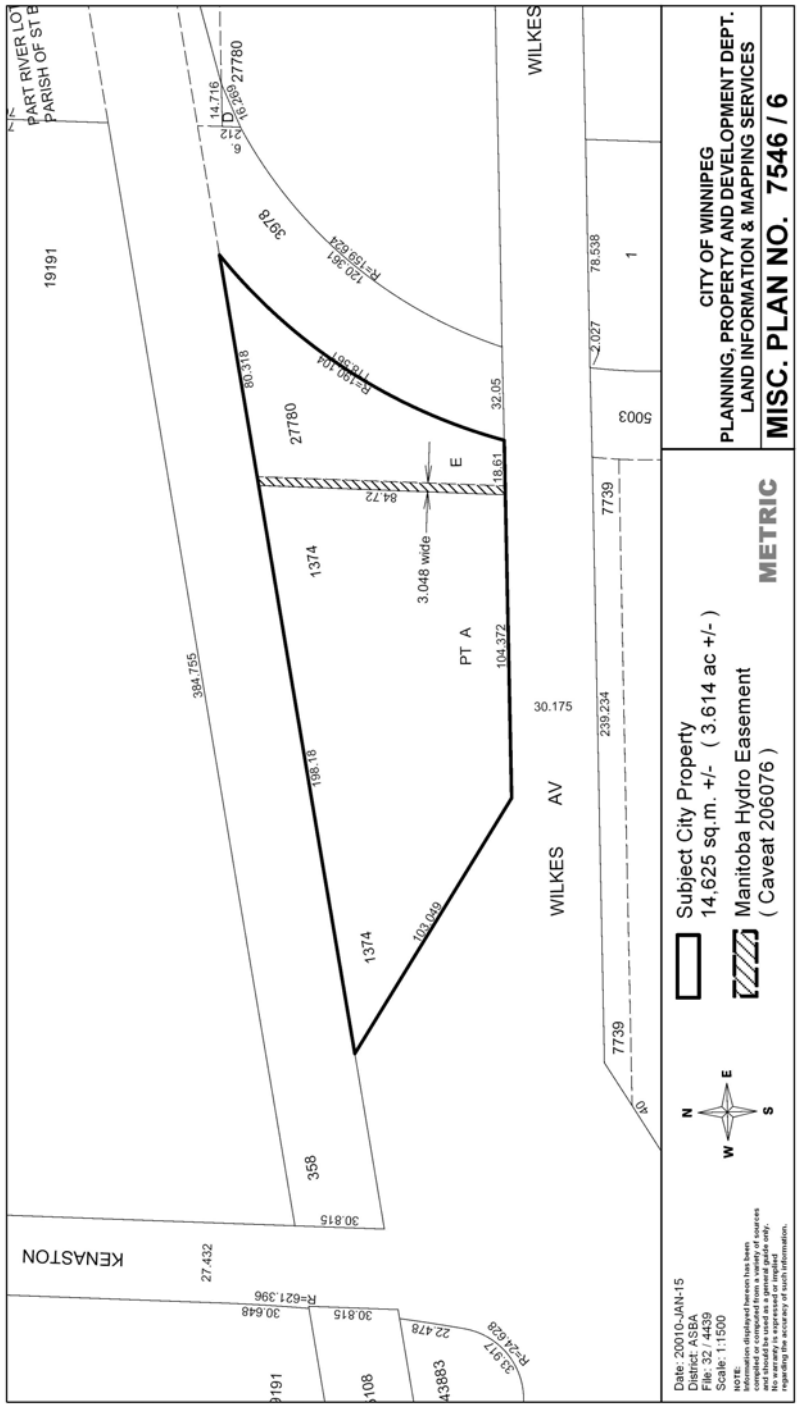
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 7546 / 6
METRIC
Subject City Property
14,625 sq.m. +/- (3.614 ac +/-)
Manitoba Hydro Easement
(Caveat 206076)
Date: 20010-JAN-15
District: ASBA
File: 32 / 4439
Scale: 1:1500
WILKES AV
KENASTON
PT A
3.048 wide
19191
27780
1374
358
3978
5003
7739
384.755
30.175
104.372
103.049
198.18
80.318
84.72
18.61
32.05
120.361
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R=190.104
R=621.396
R=24.628
27.432
30.815
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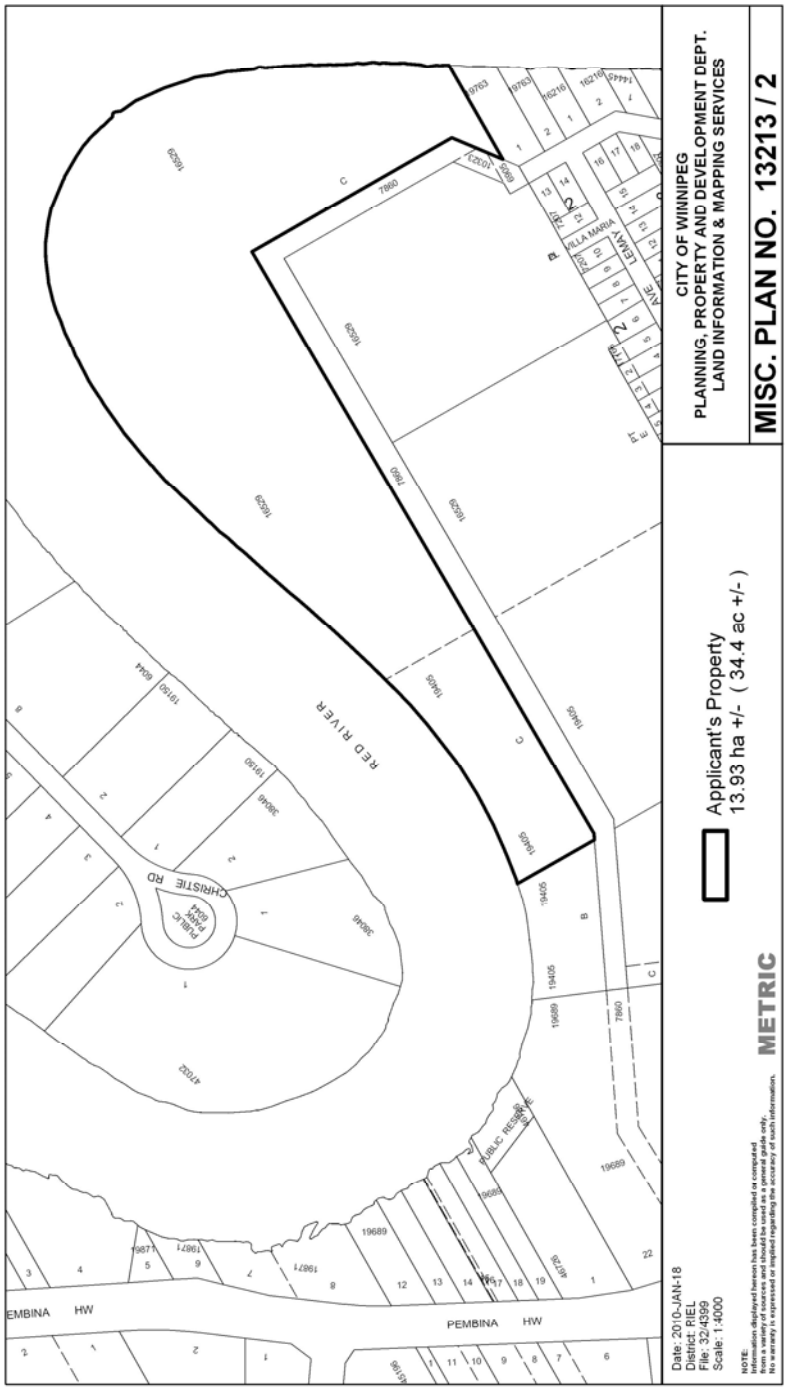

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13213 / 2
Applicant's Property
13.93 ha +/- (34.4 ac +/-)
METRIC
Date: 2010-JAN-18
District: RIEL
File: 32/4399
Scale: 1:4000
NOTE:
Information displayed hereon has been compiled or computed
from 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.
RED RIVER
CHRISTIE RD
PUBLIC PARK
PUBLIC RESERVE
PEMBINA HW
VILLA MARIA
LEMAY
AVE

Files: 32/4439&4280

INDUSTRIAL /COMMERCIAL

OFFER TO PURCHASE

5185603 Manitoba Ltd. (hereinafter called "the Applicant") hereby offers to purchase from The City of Winnipeg the following lands:

Part Lot A, Plan 1374 and Lot E, Plan 27780 shown as "Subject City Property" on Misc. Plan No. 7546/6 attached hereto;

(hereinafter called the "Lands")

The City of Winnipeg (hereinafter called "the City") hereby offers to purchase from the Applicant, free and clear of all encumbrances and restrictions, excepting any utility easements on the date of possession and adjustments, the following lands:

Parcel C, Plan 16529 and Parcel C, Plan 19405 shown as "Applicants Property" on Misc. Plan No. 13213/2 attached hereto;

(hereinafter called the "Applicants Property")

1. (1) The purchase price for the Lands (the City land) is $359,000.00.

(2) The purchase price for the Applicants Property is $400,000.00.

(3) It is understood and agreed by the City and the Applicant that the sum of $41,000.00 which constitutes the difference in value between the Land (the City land) and the Applicant's property, shall be applied by the City to the outstanding Trunk Service Rate (TSR) for land drainage that applies to the Land.

2. The payment of $41,000.00 shall be applied to the TSR's as s et out in Clause 1.(3) herein, if the sale is approved by the City's Standing Policy Committee on Property and Development and/or Council (in the event that Council approval is required) and/or its delegated authority, hereinafter called the "D ate of Approval".

3. (1) The Date of Possession shall be sixty (60) days following the Date of Approval or such other date as mutually agreed to.

(2) The Lands are presently tax-exempt. The Lands will not longer be tax-exempt on and after the dated of possession or the transfer of title, whichever is the earlier. The Purchaser is responsible for payment of the Property Taxes applicable to the Lands on and after the date of possession or transfer of title, which ever is the earlier, and will be sent a statement of, and demand payment of, Property Taxes in accordance with the provisions of, and demand for payment of, Property Taxes in accordance with the provisions of *The Municipal assessment Act* and *The City of Winnipeg Charter*. No adjustments for Property Taxes will be made on the Statement of Adjustments.

(3) The Purchaser shall pay interest in lawful money of Canada on all monies remaining outstanding and payable to the City as of the date of adjustments, which interest shall be calculated at the rate per annum equivalent to the prime lending rate in force by the City's Banker at the date of adjustments plus one (1%) percent, computed from the date of adjustments to and including the date all such monies and interest as aforesaid have been fully paid to the City.

4. Goods and Services Tax

(1) The Purchaser agrees to pay to the City all Goods and Services Tax applicable on the sale of the Lands or, if the Purchaser is a registrant under the Goods and Services legislation, the Purchaser shall advise the City in writing of its registration number. The Goods and Services Tax is to be paid, or the registration number provided, to the City on or before the date of closing or the date the balance of monies is paid to the City, whichever is the earlier.

(2) If the Purchaser fails to pay the Goods and Services Tax or fails to provide its registration number as prescribed in sub-clause (1) of this Clause, the Purchaser agrees that all of the Purchaser's rights and interests in respect of the Lands shall, at the City's sole discretion, be fully ended without notice or any formality and all monies paid to the City by the Purchaser shall be retained by the City free from every claim.

5. The Purchaser will obtain possession of the Lands at the Purchaser's own expense.

6. The Purchaser will accept Title to the Lands subject to all exceptions, reservations and encumbrances expressed or implied in the City's Title.

7. The sale of the Lands to the Purchaser shall be subject to the provisions of the By-laws of the City of Winnipeg and all amendments thereto. Furthermore, the Purchaser acknowledges and understands that its proposed use and development of the Lands may require applications for re-zoning, variances or conditional uses, and amendments to Plan Winnipeg, which applications and resulting land dedication charges (if any) are to be at the sole cost and responsibility of the Purchaser. Nothing in this Offer shall be construed as placing any duty or obligation upon the City to grant such rezoning, variance or conditional use orders and/or amendments to Plan Winnipeg when the Purchaser's a pplication for same is made to the City.

8. The Purchaser agrees that the City may register and maintain a caveat against the Lands to ensure the performance of the covenants on the part of the Purchaser herein set forth, and the Purchaser agrees to grant and does hereby grant to the City an interest in the Lands according to the tenor of this Offer.

10. (1) The Purchaser acknowledges that the City is not providing any warranty as to the environmental condition of the Lands.

(2) The Purchaser agrees that it will rely solely upon its own investigations in determining the degree of contamination, if any, existing on and within the Lands and the extent of contamination, if any.

(3) The Purchaser shall indemnify and save harmless the City from and against all claims, costs and damages arising from or in any way connected with the existence of contaminants of any kind in or on the Lands.

(4) It is understood and agreed that the terms, conditions and covenants contained in this Clause 10 shall not merge but shall survive closing.

11. The Purchaser acknowledges and agrees that notwithstanding any other terms, conditions or provisions in this agreement that:

(1) The City has given no representations or warranties with respect to the Lands or with respect to the value thereof or with respect to the Purchaser's intended uses or development or redevelopment thereof or with respect to the environmental condition of the Lands;

(2) The Purchaser has inspected or investigated the Lands, the title thereto, the permitted encumbrances, any tenancies and all other matters material to the Purchase and the proposed use of the Lands and 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;

(3) The Purchaser agrees that it is purchasing the Lands on an "as is", "where is" basis, and is purchasing the Lands based entirely on its own examinations without any representation by or on behalf of the City or any agent of the City. The Purchaser acknowledges that it has relied entirely upon its own inspection and investigation with respect to quantity, quality and value of the Lands;

(4) Any information supplied to the Purchaser by the City or its agents or representatives is and was supplied without any representation or warranty, and that the responsibility for verification of any such information shall be the responsibility of the Purchaser; and

(5) The Lands are deemed to be taken by the Purchaser at the Purchaser's own risk with all faults and imperfections whatsoever. The Purchaser agrees with the City that the application of "Buyer Beware" shall apply to the offer in the strictest meaning.

12. (1) The Purchaser agrees that the sale of the Lands shall be subject to any easement which may be required by a public utility, including, but not limited to the Manitoba Hydro, Manitoba Telephone System, Centra Gas, or The City of Winnipeg, for the maintenance of existing and future facilities together with the right to enter upon the Lands at any time, with or without equipment for said purposes and subject to the owner covenanting not to erect or cause to be erected upon the easement area any building or structure without the prior written consent of the public utility or The City of Winnipeg requiring such easement. Without limiting the generality of the foregoing, the sale of the Lands shall be subject to the following easement, namely:

(2) Easement No. 206076, in favour of Manitoba Hydro for the maintenance of its facilities located in the Lands.

(3) Any removal or relocation of a public utility will be at the expense of the Purchaser.

(4) The Purchaser to enter into agreements satisfactory to the said utilities or The City of Winnipeg.

(5) The Purchaser at its own expense shall be responsible to provide any Easement Plan that may be required to effect registration of the Easement Agreement in the Winnipeg Land Titles Office.

(6) The Purchaser acknowledges that the City may grant the easements before the Transfer of Land issues.

13. In consideration of the sale of the Lands by the City to the Purchaser, the Purchaser covenants and agrees as follows:

(1) To pay the applicable Land Titles Office registration fees and Land Transfer Tax in respect thereto.

14. It is further understood and agreed between the parties that:

(1) If required, the Purchaser agrees to be fully responsible for all activities and associated costs to create a Plan of Subdivision as it pertains to **the Lands** and the **Applicants Property**, including:

(a) the cost of preparation and registration of the subdivision; and

(b) any dedication fees payable in connection with the rezoning and creation of a subdivision.

(2) The Purchaser will be responsible for any and all costs associated with applications related to zoning, variances and conditional uses including application and processing costs and the payment of any dedication fees owing.

(3) The Purchaser and the City shall each pay their own legal and other consultant's f ees with respect to this sale.

15. **Services**

The Purchaser shall be responsible to pay the costs attributable to the Lands, including but not limited to the following:

- Land Drainage Charges
- Wastewater Sewer Extension
- Land Drainage Sewer Extension
- Surface Improvements
- In addition, the Purchaser will be required to pay $56,249.79 for the Trunk Service Rate (TSR). The City will pay the remaining TSR's as set out in Clause 1.(3) herein.

16. The Purchaser may be required to enter into a Memorandum of Understanding with the City in order to install or extend the services at its sole cost and expense within the Wilkes Avenue right-of-way.

17. Time shall be of the essence of this Offer.

18. The Purchaser will not file any caveat or other encumbrance against the Lands before the transfer of the Lands to the Purchaser.

19. The word "Purchaser" shall have a plural meaning in the event that more than one party is making this offer, and the masculine shall mean the feminine or neuter as the case may be.

20. The Purchaser acknowledges and agrees that sale of the Lands by the City is subject to the approval of City Council or its delegated authority.

21. No current survey was made of the Lands to determine the nature and extent of any structure thereon or to determine if there are any other encroachments from adjoining lands.

22. The Purchaser is hereby advised that soil conditions in Winnipeg are of the glacial till variety which are composed of Lacustrine Clays with Silt Intrusions. The Purchaser shall be responsible for any increased costs of development due to this random stratification.

23. The Purchaser is aware and acknowledges that the City does not provide Declarations as to Possession.

24. None of the provisions of this agreement will merge with the conveyance of the Lands.

The full, true and correct name of the Purchaser is as follows: -

5185603 MANITOBA LTD. — 10-555 HERVO ST WINNIPEG MAN.
Name (Please Print) Address

Purchaser's Registrat ion No. (G.S.T.) 822184941 RT0001

IN WITNESS WHEREOF the Purchaser has signed this document in

WPG, MB, this 10 day of May 20 10

Witness — Authorized Signature

ROBERT S. HARRIS, PRESIDENT
Name and Title of Authorized Signature (Please print)

Witness — Authorized Signature

Name and Title of Authorized Signature (Please print)

ACCEPTED this _____ day of _____, A.D., 20___

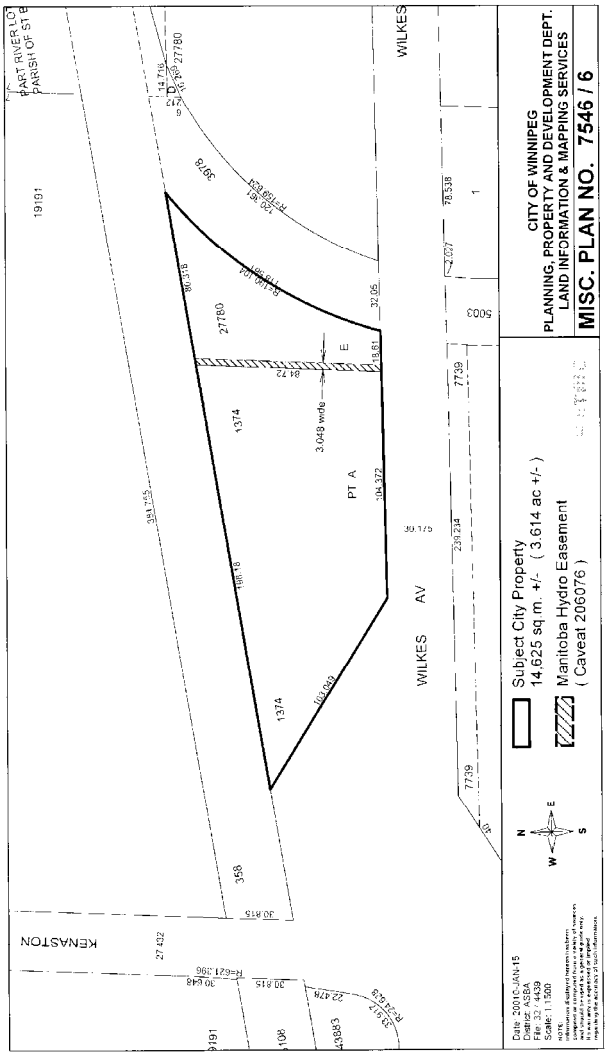
THE CITY OF WINNIPEG

Per: _____

Director of Planning, Property and Development Department

Approved as to details: Approved as to form:

Planning, Property and Development for City Solicitor/Manager of Legal Services


CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 7546 / 6
Subject City Property
14,625 sq.m. +/- (3.614 ac +/-)
Manitoba Hydro Easement
(Caveat 206076)
Date: 2001C-JAN-15
District: ASBA
File: 32 / 4439
Scale: 1:1500
WILKES AV
KENASTON
PT A
1374
27780
3.048 wide
19191
358
7739
5003
78.538
32.05
18.61
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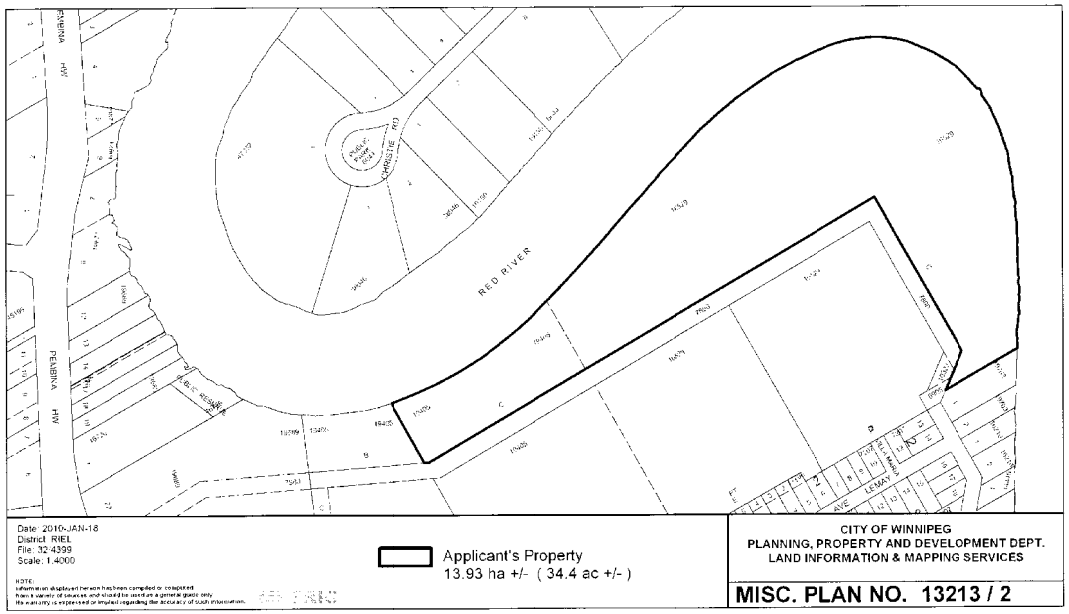
PEMBINA HWY
RED RIVER
LEMAY AVE
Date: 2010-JAN-18
District: RIEL
File: 32.4399
Scale: 1:4000
Applicant's Property
13.93 ha +/- (34.4 ac +/-)
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13213 / 2