**Minutes – Executive Policy Committee – May 28, 2013**

**Minute No. 308**
**Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – May 27, 2013**

**Item No. 1 Encroachment Agreement - Public Right-of-Way between 305 Hargrave Street and 311 Portage Avenue (Daniel McIntyre Ward)**

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submitted the following to Council:

1. That an Encroachment Agreement in favour of 310 Donald Inc. for the purpose of an Overhead Pedestrian Walkway, shown and identified as "Encroachment Area" on Misc. Plan No. 14414 be approved in accordance with the proposed terms and conditions as set out in Schedule A.

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 Downtown Development, Heritage and Riverbank Management – May 27, 2013**

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

That the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On May 27, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

# ADMINISTRATIVE REPORT

**Title:** **Proposed Encroachment Agreement to allow for the use of the Public Right-of-Way between 305 Hargrave Street and 311 Portage Avenue for the purpose of an Overhead Pedestrian Walkway**

**Critical Path:** **Standing Policy Committee on Downtown Development, Heritage and Riverbank Management, Executive Policy Committee, Council**

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| Iain Day | B. Thorgrimson | M. Ruta | D. Joshi<br>COO |

## RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of 310 Donald Inc. for the purpose of an Overhead Pedestrian Walkway, shown and identified as “Encroachment Area” on Misc. Plan 14414 be approved in accordance with the proposed terms and conditions as set out in the attached Schedule A.

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 March 24, 2004, Council established the Standing Policy Committee on Downtown Development. This Standing Policy Committee has jurisdiction over matters related to asset management, development control, land acquisition, land development and planning and land use in the area defined as Downtown.

On March 23, 2011, Council amended the name of the Standing Policy Committee on Downtown Development to the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management.

In this regard, the Planning, Property and Development Department has negotiated the proposed terms and conditions of an Encroachment Agreement in favour of 310 Donald Inc. for an Overhead Pedestrian Walkway connecting Centrepoint at 311 Portage Avenue with a parkade at 305 Hargrave Street

## IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to lease the lands as shown on the attached Miscellaneous Plan No. 14414.

## HISTORY

Currently under construction, Centrepoint (311 Portage Avenue) is a new 200,000 square foot mixed use building located within the City of Winnipeg`s Sport Hospitality and Entertainment District (SHED). When completed the twenty story building will house four floors of office space, a one fifty four room Hotel, two restaurants and a four hundred stall parkade.

An application was submitted to the City's Zoning and Permits Branch to develop and maintain an Overhead Pedestrian Walkway encroaching onto the City right-of-way between 305 Hargrave Street and 311 Portage Avenue.

The application was circulated to all applicable City departments and public utilities for consideration and comments. All pertinent comments were incorporated into the City`s Terms and Conditions.

The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of 310 Donald Inc. to develop and maintain an Overhead Pedestrian Walkway encroaching onto the City right-of-way.

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

This report seeks approval of the Encroachment Agreement as negotiated.

## FINANCIAL IMPACT

**Financial Impact Statement** **Date:** April 30, 2013

**Project Name:** **First Year of Program** **2013**

Proposed Encroachment Agreement to allow for the use of the Public Right-of-Way between 305 Hargrave Street and 311 Portage Avenue for the purpose of an

| | 2013 | 2014 | 2015 | 2016 | 2017 |
|---|---|---|---|---|---|
| **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 | 438 | 188 | 188 | 188 | 188 |
| Net Cost/(Benefit) | $ (438) | $ (188) | $ (188) | $ (188) | $ (188) |
| Less: Existing Budget Amounts | (438) | (188) | (188) | (188) | (188) |
| Net Budget Adjustment Required | $ - | $ - | $ - | $ - | $ - |

**Additional Comments:** Revenues in 2013 consist of the annual enroachment fee of $188 + a one-time admin charge of $250. From 2014 onward, revenue consists of just the annual enroachment fee.

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

## CONSULTATION

**In preparing this report there was consultation with:**

Legal Services as to legal issues
Corporate Finance

## SUBMITTED BY

| | |
|---|---|
| Department | Planning, Property and Development |
| Division | Municipal Accommodations |
| Prepared by: | Nolan Winters, Real Estate Officer |
| Date: | May 6, 2013 |
| File No. | 9000/48 |

April 25/13

## SCHEDULE A

**PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF THE PUBLIC RIGHT OF WAY CONNECTING 305 HARGRAVE AVENUE AND 311 PORTAGE AVENUE FOR THE PURPOSE OF AN OVERHEAD PEDESTRIAN WALKWAY- 310 DONALD INC.**

| | |
|---|---|
| Use: | Construction of an overhead pedestrian walkway (hereinafter called "the walkway") |
| Licensor: | The City of Winnipeg |
| Licensee: | 310 Donald Inc. (hereinafter called the "Licensee") |
| Area: | Shown and identified as 'Encroachment Area' on Misc. Plan No. 14414, attached; |
| Term: | Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council; |
| Rental: | $187.50 per annum plus GST; plus an initial administrative fee of $250.00 plus GST; in accordance with the fees set forth in the City's The Encroachment By-law No. 692/74 as amended from time to time. In the event the fees in said By-law are revised or amended, the Licensee agrees to pay the revised or amended fee. |
| Municipal Taxes: | All municipal taxes, school taxes, local improvements, license fees, business tax, etc., which may be charged in respect of the use and occupation of the premises. |
| Insurance: | The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage:<br><br>Commercial general liability insurance in the amount of at least five million dollars ($5,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of a cross liability clause, products and completed operations and contractual liability;<br><br>A broad form property insurance policy for the full replacement cost insuring the walkway structure encroachment area including the connections;<br><br>All property policies written on behalf of the Licensees shall contain a waiver of any subrogation right which the Licensees' insurers may have against the City and against those for whom the City is, in law, responsible, whether any such damage is caused by the act, omission or fault of the City or by those for whom the City, is, in law, responsible; |

During the construction of the walkway the Licensee shall purchase and keep in force during the construction process the following insurance coverage(s):

Wrap up liability insurance in the amount of at least five million dollars ($5,000,000) per occurrence, such liability policy to name the Licensee, Licensor, all contractors, sub-contractors, architects and engineers as insured and contain evidence of a cross liability clause, products and completed operations, bodily injury, property damage, and contractual liability and including 24 months completed operations after completion.

All risks course of construction insurance in the amount of one hundred percent (100%) of the total Contract Price.

Automobile Liability insurance covering all motor vehicles, owned, operated or licensed in the name of Licensee or others on the Licensee's behalf in an amount not less than two million dollars ($2,000,000).

The Licensee or others performing the work on the Licensee's behalf are responsible for insuring equipment and tools used for the construction/installation that may be owned, rented, leased or borrowed.

Workers compensation or employment insurance coverage must be in place in accordance with provincial legislation.

All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

Deductibles shall be borne by the Licensee;

The Licensee shall not cancel, materially change or cause any such policies to lapse without a minimum of thirty (30) days prior written notice to the City of Winnipeg;

The Licensee shall file with the City a certificate of insurance in a form satisfactory for the City Solicitor;

The City shall have the right to alter the limits and/or coverages as reasonably required from time to time reflective of the legal environment and insurance industry standards, during the continuance of this encroachment agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change;

| | |
|---|---|
| Cancellation: | Six (6) months written notice by either party, or<br><br>Should the Licensee be in default of the terms and conditions of the encroachment agreement, the City shall provide the Licensee with fifteen (15) days' notice to remedy the default along with a description of the nature of the default. Should the Licensee not remedy the default to the satisfaction of the City within fifteen (15) days, the City at its sole discretion may terminate the encroachment agreement immediately upon the expiration of the fifteen (15) days.<br><br>The Licensee acknowledges and agrees that this encroachment agreement is subject to The Encroachment By-law No. 692/74. |
| Conditions: | The Licensee understands and agrees that the 'Encroachment Area' is licensed on an "as is" basis.<br><br>The development, maintenance, repair, renovations and annual structural inspection of the walkway in the Encroachment Area will be performed at the sole cost, expense and effort of the Licensee, including, obtaining all permits required to develop, occupy and utilize the Encroachment Area for its intended use, an annual inspection of the walkway for any defects, and a more thorough, complete and full inspection of the walkway every five years. If any defect or deterioration is noted, then inspections shall be required more frequently to the extent necessary to ensure safety. The Licensee shall supply the results of such inspections to the City promptly upon request being made therefor by the City. The walkway shall be maintained by the Licensee in a safe, clean and tidy condition.<br><br>The Licensee shall not erect or permit the erection of any building or other structure, other than the walkway referred to herein, nor make any excavation other than that required for erecting the walkway referred to herein, and shall not place fill upon the Encroachment Area or on the lands adjacent to the Encroachment Area;<br><br>The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation by the Licensee of the Encroachment Area including, but not limited to, license fees, business tax, garbage removal, janitorial service, snow removal and security cost. |

Immediately following construction or dismantling of the walkway, the Licensee agrees to restore the lands in the Encroachment Area and the adjacent lands, including but not limited to the public lane, to a condition at least equal to the condition they were in prior to the said construction. The Licensee shall be responsible for any and all damages to the lands and permitted structures in the Encroachment Area and adjacent lands, including but not limited to the public lane, resulting from its use and occupation of the Encroachment Area.

That the walkway be based on a minimum vertical clearance of 4.6 metres above the lane.

Drainage of the walkway must be controlled so that water is not allowed to drain directly to the lane below.

That if at any time during the term the City's use or requirements for the public lane reasonably necessitate the relocation and/or modification and/or removal of the walkway, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the walkway as required by the City and to pay all costs and expenses associated therewith. The City must give the Licensee at least six (6) months' notice to relocate and/or modify and/or remove the walkway.

Standard vertical clearance signs must be posted on the structure;

The Licensee shall also be responsible for cleanup of litter in the immediate area as a result of use and occupation of the Encroachment Area;

The employees, agents and servants of the City shall have the right of access to enter upon the walkway upon giving reasonable notice to the Licensee, except in the case of an emergency with or without equipment:

(i) To view the state of repair of the Encroachment Area and the Licensee shall within Thirty (30) Days of the City giving to the Licensee notice to repair, repair the walkway in accordance with such notice, and in the event the Licensee fails to repair in accordance with such notice as aforesaid, the City may do such work at the sole cost and expense of the Licensee;

(ii) For the purpose of maintaining and/or repairing its utilities in or near to the walkway; or

(iii) For any other purpose as required by the City, acting reasonably;

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

That if any removal, relocation or adjustment of existing MTS facilities is required, it will be at the expense of the Licensee; that extreme caution be used when excavating in the vicinity of a MTS buried plant and that the Licensee contact the Buried Plan Location Service at 941-7267, 48 hours prior to excavation for further confirmation in the field;

The Licensee shall not assign this agreement without the prior written consent of the Licensor. Should either or both of the buildings on either side of the walkway be sold or transferred to a third party, the Licensee shall obtain an acknowledgement and contractual undertaking by the purchaser or transferee in a form satisfactory to the City to be bound by the terms and conditions of the Encroachment Agreement prior to such purchase or transfer taking place.

The Licensee shall indemnify and save the City harmless from and against any and all claims for damages or injuries, including death that may arise from the use of the Encroachment Area by the Licensee.

To pay any and all costs for the relocation of any existing street lighting standard arising due to the existence of the New Walkway and the costs incurred of the construction or placement of any additional lighting or street lighting standard required under the New Walkway;

Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department, the Director of Public Works Department and by the City Solicitor/Director of Legal Services to protect the City's interests.

That the approval of this application by Council or its delegated authority is only valid for a period of six (6) months from the date of said approval unless the applicant executes an Encroachment Agreement with the City of Winnipeg within the stated time frame, or alternatively obtains an extension of time from the Designated Officer – Encroachments;

That all applicable permits be obtained prior to any further 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.

**310 DONALD INC. HEREBY ACKNOWLEDGES AND AGREES WITH THE ABOVE TERMS AND CONDITIONS:**

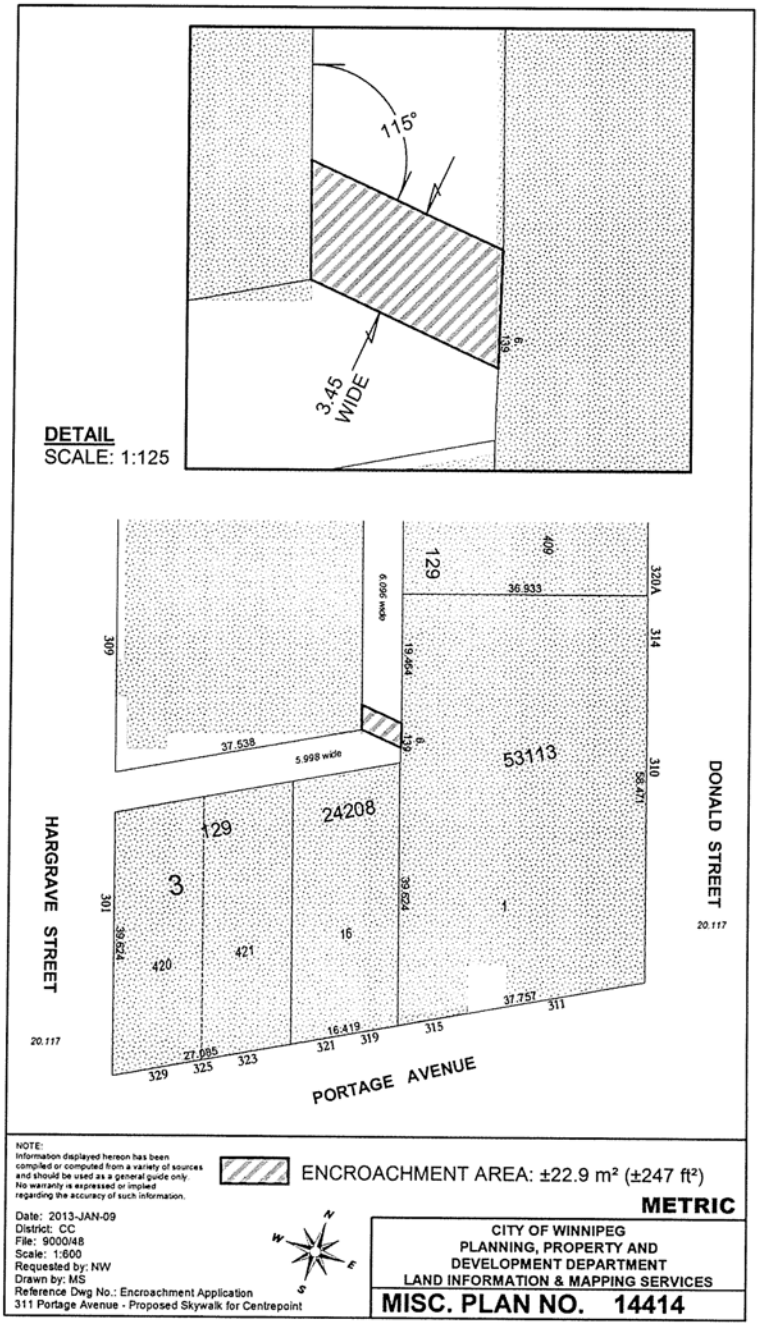
**310 DONALD INC.**

Per: _____

Name: Scot Stephanson

TITLE: Vice President

Date: April 26, 2013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301
39.624
420
421
16
1
37.757
311
16.419
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27.085
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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.
ENCROACHMENT AREA: ±22.9 m² (±247 ft²)
METRIC
Date: 2013-JAN-09
District: CC
File: 9000/48
Scale: 1:600
Requested by: NW
Drawn by: MS
Reference Dwg No.: Encroachment Application
311 Portage Avenue - Proposed Skywalk for Centrepoint
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14414

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