Minute No. 545
Report – Standing Policy Committee on Property and Development – July 2, 2013

Item No. 23 **Encroachment Agreement to Allow for the Use of the Grant Avenue Public Right-of-Way at 500 Shaftesbury Boulevard and 600 Shaftesbury Boulevard (Charleswood-Tuxedo Ward)**

COUNCIL DECISION:

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

1. That a Encroachment Agreement in favour of Canadian Mennonite University for the development and maintenance of a building encroachment over Grant Avenue airspace as shown and identified as "Encroachment Area" on Misc. Plan 14502 be approved in accordance with the proposed terms and conditions as set out in the attached Schedule A.

2. That a Encroachment Agreement in favour of Canadian Mennonite University for the development, maintenance and operation of an Overhead Pedestrian Walkway over Grant Avenue, shown and identified as "Encroachment Area" on Misc. Plan 14502 be approved in accordance with the proposed terms and conditions as set out in the attached Schedule A.

3. 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 2, 2013

DECISION MAKING HISTORY:

Moved by Councillor Browaty,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 10, 2013, 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 July 2, 2013, 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

Title: **Proposed Encroachment Agreement to Allow for the Use of the Grant Avenue Public Right-of-Way at 500 Shaftsbury Boulevard and 600 Shaftsbury Boulevard**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
I. Day	B. Thorgrimson	M. Ruta	D. Joshi

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of Canadian Mennonite University for the development and maintenance of a building encroachment over Grant Avenue airspace as shown and identified as “Encroachment Area” on Misc. Plan 14502 be approved in accordance with the proposed terms and conditions as set out in the attached Schedule A.

2. That a proposed Encroachment Agreement in favour of Canadian Mennonite University for the development, maintenance and operation of an Overhead Pedestrian Walkway over Grant Avenue, shown and identified as “Encroachment Area” on Misc. Plan 14502 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

Encroachment By-law 692/74, General Regulations, 4. (1) d, states:

“Where the encroachment is of an unusual or commercial nature that it be referred to the Director of Land and Development Services of the City for the purpose of negotiating a reasonable rent and making recommendation to the Chief Administrative Officer for subsequent referral to Council.”

In this regard, the Planning, Property & Development Department has negotiated Terms and Conditions of an Encroachment Agreement, in favour of Canadian Mennonite University.

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. 14502.

HISTORY

Canadian Mennonite University, situated at both 500 and 600 Shaftsbury Boulevard is poised to expand its campus through the construction of a new building on the north side of Grant Avenue precipitating the need for the proposed overhead pedestrian walkway.

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 500 Shaftsbury Boulevard and 600 Shaftsbury Boulevard.

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 Canadian Mennonite University 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: June 13, 2013

Project Name:

First Year of Program **2013**

Proposed Encroachment Agreement to Allow for the Use of the Grant Avenue Public Right-of-Way at 500 Shaftsbury Boulevard and 600 Shaftsbury Boulevard

	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	576	1,031	1,031	1,031	1,031
Net Cost/(Benefit)	$ (576)	$ (1,031)	$ (1,031)	$ (1,031)	$ (1,031)
Less: Existing Budget Amounts	(576)	(1,031)	(1,031)	(1,031)	(1,031)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues consist of the $781 encroachment fee and annual admin fee of $250. The 2013 encroachment fee amount has been pro-rated for an assumed August 1 commencement date.

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

CONSULTATION

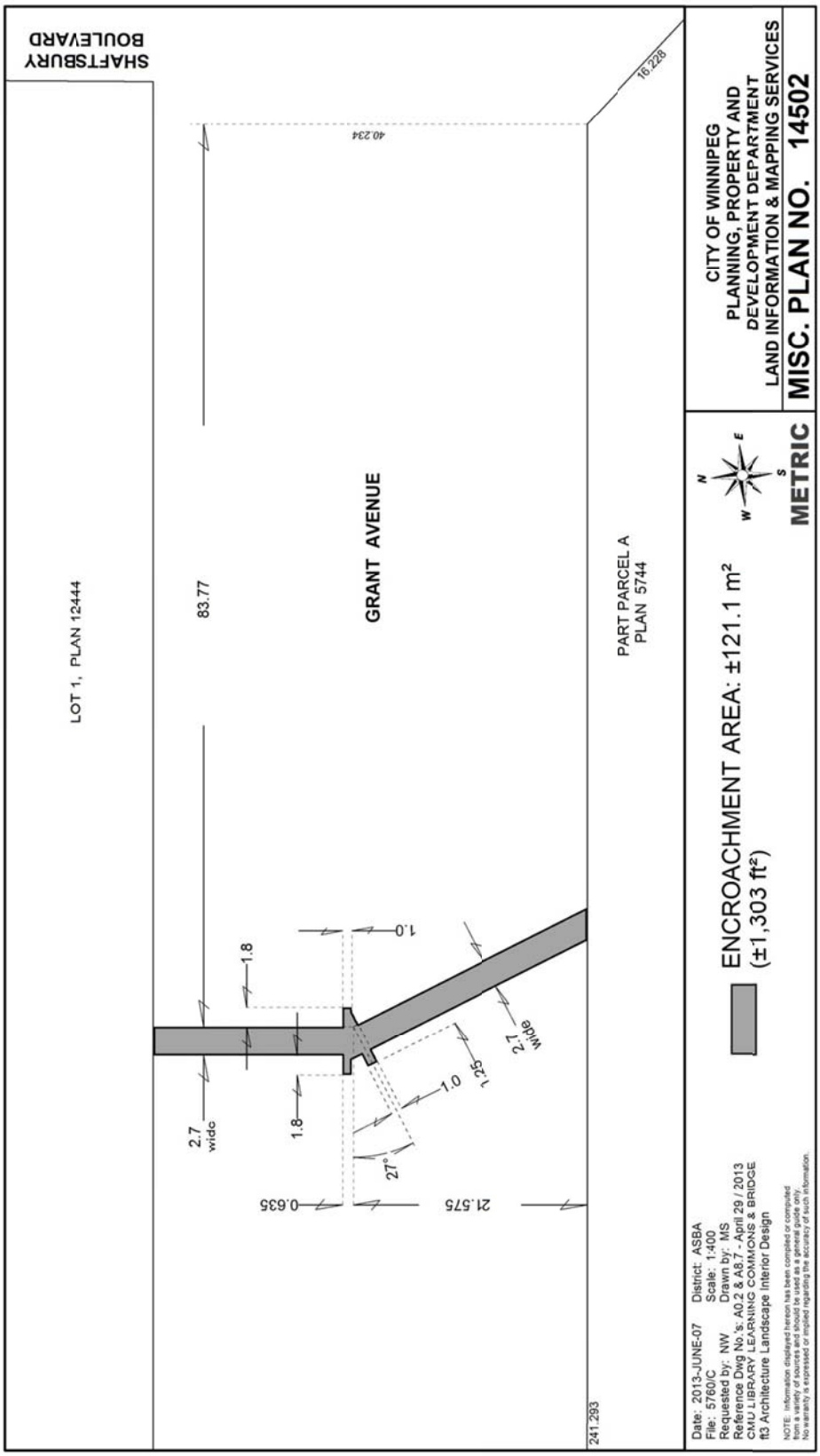
In preparing this report there was consultation with:

Legal Services as to legal issues
Corporate Finance
Public Works Department

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters, Real Estate Officer
Date:	June 13, 2013
File No.	5760/C

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SHAFTSBURY BOULEVARD
LOT 1, PLAN 12444
GRANT AVENUE
PART PARCEL A PLAN 5744
83.77
40.234
16.228
241.293
2.7 wide
1.8
1.0
1.8
2.7 wide
1.0
1.525
27°
0.635
21.575
ENCROACHMENT AREA: ±121.1 m²
(±1,303 ft²)
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14502
Date: 2013-JUNE-07 District: ASBA
File: 5760/C Scale: 1:400
Requested by: NW Drawn by: MS
Reference Dwg No's: A0.2 & A8.7 - April 29 / 2013
CMU LIBRARY LEARNING COMMONS & BRIDGE
ft3 Architecture Landscape Interior Design
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.

SCHEDULE A

PROPOSED TERMS AND CONDITIONS TO DEVELOP AND MAINTAIN AN OVERHEAD PEDESTRIAN WALKWAY OVER GRANT AVENUE AT 500 SHAFTSBURY BOULEVARD AND 600 SHAFTSBURY BOULEVARD - CANADIAN MENNONITE UNIVERSITY

Use: Development and maintenance of an overhead pedestrian walkway ("OPW")

Licensee: Canadian Mennonite University (hereinafter called the 'Licensee');

Area: Shown and identified as "Encroachment Area: ±121.1m² (±1,303 ft²)" on Misc. Plan No. 14502 attached;

Term: Annual Continuing, commencing the first day of the month following approval from City Council or another date as mutually agreed upon;

Rental: $781.25 per annum, plus applicable GST, computed on the basis of the fees outlined in the City of Winnipeg Encroachment By-law No. 692/74 and amendments thereto, in the 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 annual administrative fee of $250.00 plus applicable GST;

Insurance: To further safeguard The City of Winnipeg, the Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage:

(1) Commercial General Liability Insurance

- (a) in the amount of least $5,000,000
- (b) with The City of Winnipeg to be added as an additional insured
- (c) containing a cross liability clause

(2) A broad form property insurance policy, for the full replacement cost insuring the OPW.

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

All property policies written on behalf of the Licensees shall contain a waiver of subrogation rights which the Licensee's 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 OPW, the Licensee shall purchase, or cause to be purchased, at a minimum the following insurance coverage:

(a) wrap up liability insurance in the amount of at least five million dollars ($5,000,000);

(b) such liability policy to name the Licensee, The City of Winnipeg, all contractors, sub-contractors, architects and engineers as insured and contain a cross liability clause, products and completed operations endorsement, contractual liability and include 24 months completed operations after completed.

All risks course of construction insurance in the amount of one hundred percent of the total construction cost.

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

Deductibles shall be borne by the Licensee;

The Licensee shall provide the City of Winnipeg with written notice of any material changes to their policies within thirty (30) days of the change taking effect;

The Licensee shall file with the City of Winnipeg an annual certificate of insurance in a form satisfactory to the City Solicitor;

The City shall have the right to alter the limits and/or coverages reasonably required from time to time during the continuance of the agreement and for any subsequent renewal thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change;

Further, the Licensee shall ensure that that any Contractor and/or Sub-Contractor hired to perform maintenance work or repairs to the OPW shall maintain acceptable insurance in the amount of at least $5,000,000 per occurrence with at least a $5,000,000 general aggregate covering bodily injury, property damage and personal injury. All liability policies to include The City of Winnipeg as an additional insured and include contractual liability, broad form completed operations, a cross liability clause and a provision for thirty (30) days written notice of cancellation/termination.

Such certificate of insurance must be in a form satisfactory to the City of Winnipeg and must be provided at least two (2) business days prior to commencement of any work on the site:

Deductibles shall be borne by the Contractor and/or Sub-Contractor.

Cancellation: Six (6) months written notice by either party;

Conditions:

That the approval of this application by Council is only valid for a period of 6 (six) months from the date of said approval unless the Licensee enters into 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;

The development, maintenance, repair, renovations and annual structural inspection of the OPW 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 OPW for any defects, and a more thorough, complete and full inspection of the OPW 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 OPW shall be maintained by the Licensee in a safe, clean and tidy condition.

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.

That if at any time during the term the City's use or requirements for the street reasonably necessitate the relocation and/or modification and/or removal of the OPW, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the OPW 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 OPW.

The Licensee shall not assign this agreement without the prior consent of the Director of Planning, Property & Development.

The Licensee shall provide, install and maintain standard vertical clearance signs to be posted on the OPW structure to the satisfaction of the Director of Public Works;

The employees, agents and servants of the City shall have the right of access to enter upon the OPW 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 OPW 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 OPW; or

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

The Licensee shall permit all utilities to enter the area for maintenance, repair or installation of services at anytime without notice to the Licensee and that any removal or relocation of existing facilities as a result of the proposed application 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 204-480-1212;

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 MTS buried plant and that the Licensee contact the Buried Plan Location Service at 204-941-7267, 48 hours prior to excavation for further confirmation in the field;

Any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the proposed encroachments will be at the expense of the Licensee;

The Licensee shall grant Centra Gas Manitoba Inc. all required easements for existing facilities and future developments;

Manitoba Hydro is unable to determine where their existing facilities are located in relation to the proposed new lot(s). They will require the landowner's surveyor to prepare a sketch showing the exact location of all Centra Gas Manitoba Inc. facilities on the subject property. Manitoba Hydro will return an easement layout for their preparation of the easement plan, if required;

If this application is revised at any time it will be necessary for Manitoba Hydro/Centra Gas to review the file to determine if easement requirements remain the same;

The Licensee shall:

i) maintain a minimum vertical clearance of 5.0m between the Grant Avenue roadway and the bottom of the OPW, including any appurtenances thereto;

ii) install and maintain a guardrail system that protects errant vehicles from the OPW supports located within the median on Grant Avenue, to the satisfaction of the Director of Public Works;

iii) design the supporting OPW structure within the median of Grant Ave. so as to ensure that the applicant can satisfactorily install a guardrail system while not requiring modifications to the existing curb and roadway alignment of Grant Avenue, to the satisfaction of the Director of Public Works.

The Licensee acknowledges and agrees that The City of Winnipeg Encroachment By-law No. 692/74 (the "By-law") applies to this agreement and in the event of an inconsistency between this agreement and the By-law, the inconsistency will be resolved in accordance with the provisions of the By-law.

The Licensee acknowledges and agrees that all costs associated with the repairs, maintenance, relocation and/or removal of the overhead OPW are the responsibility of the Licensee;

The Licensee shall enter into a formal agreement with the City embodying the foregoing terms and conditions and such other terms and conditions as the City Solicitor/Director of Legal Services deems necessary and in a form satisfactory to the City Solicitor/Director of Legal Services.

Except to the extent caused or contributed to by the negligence or willful conduct of the City, its agents, employees or others for whom the City is responsible at law or by a third party, the Licensee shall indemnify the City and save the City harmless from and against all claims for loss or damages which arise out of the existence, maintenance and use of the encroachment areas by the Licensee. The Licensee shall release and forever discharge the City from any claims or losses suffered by the Licensee as a result of the use of the encroachment area or any actions of the City on or around the encroachment area except to the extent such claims are caused or contributed to by the negligence or willful conduct of the City, its agents, employees or others for whom the City is responsible at law;

The Licensee shall comply with all applicable laws and obtain 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/Director of Legal Services as to form and content.

CANADIAN MENNONITE UNIVERSITY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE DEVELOPMENT AND MAINTAINENCE OF AN OVERHEAD PEDESTRIAN WALKWAY IN THE AREAS IDENTIFIED ON MISC. PLAN NO. 14502, ATTACHED, IN ACCORDANCE WITH TERMS AND CONDITIONS AS OUTLINED HEREIN.

CANADIAN MENNONITE UNIVERSITY

PER: _____

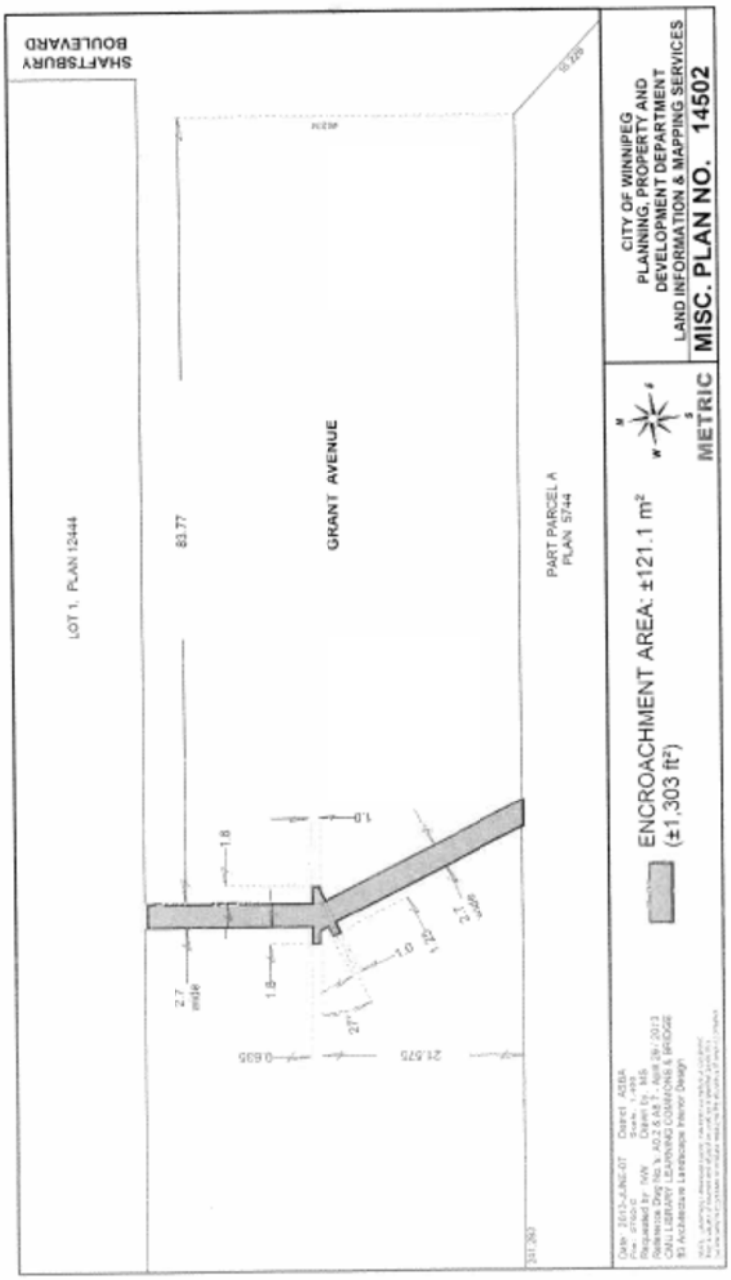
NAME: John Unger

Vice President

TITLE: Admin & Finance

June 11, 2013

DATE


SHAFTSBURY BOULEVARD
LOT 1, PLAN 12444
GRANT AVENUE
83.77
PART PARCEL A PLAN 5744
ENCROACHMENT AREA: ±121.1 m²
(±1,303 ft²)
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14502

SCHEDULE B

ft3
Architecture
Landscape
Interior Design

Suite 500, 360 Waterfront Drive
Winnipeg MB Canada R3B 0G5
toll free 877.640.1192
t. 204.885.9323 | f. 204.837.7235

Suite 304, 255 - 17th Avenue SW
Calgary AB Canada T2S 2T8
toll free 877.640.1192
t. 403.640.1192 | f. 403.640.7725

5 June, 2013

Steven Chapman, P.Eng.
Traffic Management Engineer
City of Winnipeg Public Works Dept.
1155 Pacific Ave., R3E 3P1

Dear Steven,

RE: 500/600 SHAFTESBURY BLVD. – CANADIAN MENNONITE UNIVERSITY LIBRARY AND PEDESTRIAN BRIDGE.

With respect to the above project we understand that the required Encroachment Agreement cannot proceed without the endorsement of the Public Works Department. We are aware that traffic impact protection will be required at the location of the stone-clad bridge support in the median on Grant Avenue. Our project schedule has not permitted us to prepare a detailed design for this feature, but it is not being omitted from the design. We have included a cash allowance in the project tender to ensure that the required protection will be included.

We are prepared to make modifications as necessary to the bridge support to ensure that the traffic barriers function properly, and to ensure that no roadway modifications will be required to accommodate the new pedestrian bridge. Please accept this letter as our assurance that we will continue to work to provide the required safety features to the satisfaction of the Public Works Department. Working with a local supplier to implement the guards, we will provide the required documentation, including engineered shop drawings, in a timely fashion.

Sincerely,

Jerald Peters MArch, MAA, OAA, SAA, AAA, MRAIC, LEED AP
Principal

PROVINCE OF MANITOBA
FT3
ARCHITECTURE
LANDSCAPE
INTERIOR DESIGN
No. 015
APPROVED ARCHITECTURAL CORPORATION

PROVINCE OF MANITOBA
JERALD D. PETERS
REGISTERED ARCHITECT

PRINCIPALS:
Rudy P. Friesen, Architect, AAA, MAA, SAA, FRAIC, Hon. FAIA
Jerald D. Peters, Architect, AAA, AIBC, MAA, OAA, SAA, MRAIC
Joanne L. McFadden, Interior Designer, IDA, PIDM, IDC
Rock G. Jerome, CET, CCCA
Marlon W. Duhoux, Architect, AAA, AIA, MAA, MRAIC
Keesa E. Hutchinson, Architect, AAA, MAA, MRAIC
Chantal L. Alary, Landscape Architect, MALA, SALA, CSLA