Minute No. 670
Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – September 30, 2013

Item No. 1 **Encroachment Agreement to allow for the use of the Argyle Street Right-of-Way to Develop and Maintain a Paved Loading Zone to Service a Multi-Family Residential Complex (Point Douglas Ward)**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and adopted the following:

1. That a Encroachment Agreement in favour (C A H R D) Centre For Aboriginal Human Resources Development Inc. for the purpose of establishing a loading zone, identified as "Encroachment Area" on Misc. Plan 14531/1 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.

Report – Standing Policy Committee on Downtown Development, Heritage and Riverbank Management – September 30, 2013

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

That the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October 9, 2013, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 30, 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.

On September 9, 2013, the Standing Policy Committee on Downtown Development, Heritage and Riverbank Management Committee laid over the matter to its meeting on September 30, 2013.

ADMINISTRATIVE REPORT

Title: **Proposed Encroachment Agreement to allow for the use of the Argyle Street Right-of-Way to Develop and Maintain a Paved Loading Zone to Service a Multi-Family Residential Complex**

Critical Path: **Standing Policy Committee on Downtown Development, Heritage and Riverbank Management, 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 (C A H R D) Centre For Aboriginal Human Resources Development Inc. for the purpose of establishing a loading zone, identified as "Encroachment Area" on Misc. Plan 14531/1 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 rental 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 (C A H R D) Centre For Aboriginal Human Resources Development Inc.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to entering into an Encroachment Agreement shown on the attached Miscellaneous Plan No. 14531/1.

HISTORY

(C A H R D) Centre For Aboriginal Human Resources Development Inc. is seeking an Encroachment Agreement to develop and maintain a paved surface on Argyle Street to provide access to the rear of a proposed multi-tenant residential building for drop off and pick up of residents, deliveries and garbage collection. The area is not intended to be used for parking.

(C A H R D) Centre For Aboriginal Human Resources Development Inc. submitted an application to the City's Zoning and Permits Branch to allow for a paved surface on Argyle Street, an undeveloped City-owned right-of-way.

The application was circulated to applicable City departments and public utilities for consideration and comments. All comments and concerns have been incorporated into the signed terms and conditions.

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

The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement in favour of (C A H R D) Centre For Aboriginal Human Resources Development Inc..

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: August 21, 2013

Project Name:

First Year of Program **2013**

Proposed Encroachment Agreement to allow for the use of the Argyle Street Right-of-Way to Develop and Maintain a Paved Loading Zone to Service a Multi-Family

	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	1,117	3,469	3,469	3,469	3,469
Net Cost/(Benefit)	$ (1,117)	$ (3,469)	$ (3,469)	$ (3,469)	$ (3,469)
Less: Existing Budget Amounts	(1,117)	(3,469)	(3,469)	(3,469)	(3,469)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenue in 2013 consists of annual rent of $3,468.75 pro-rated for an assumed October 1 commencement date + an initial admin fee of $250. Revenues from 2014 onward consist of the annual rental amount only.

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

CONSULTATION

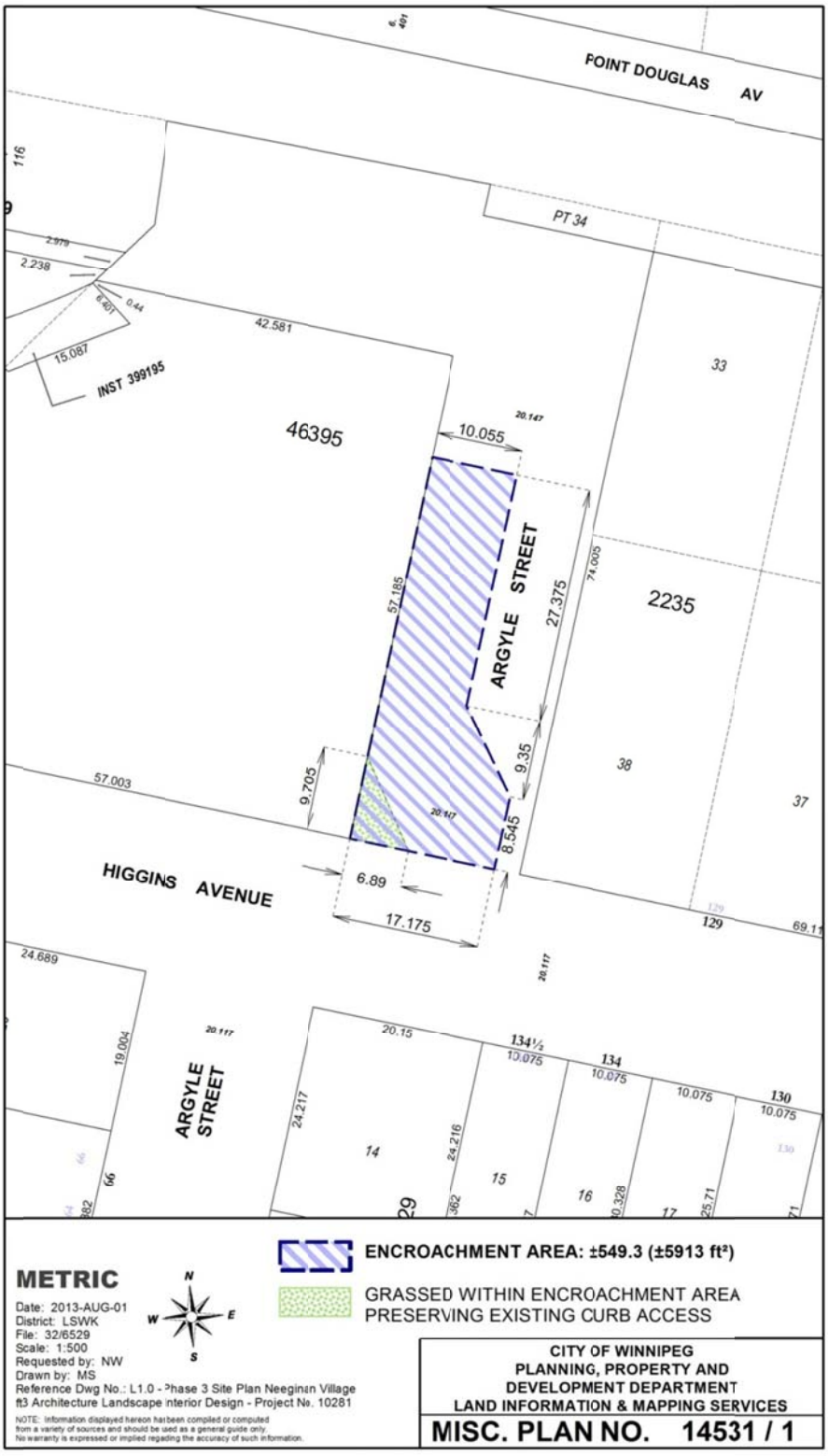
In preparing this report there was consultation with:

Legal Services Department as to legal issues
Risk Management, Corporate Finance

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters
Date:	August 21, 2013
File No.	MA2013-127

O:Reports Directive\Municipal Accommodations\Leases\MA2013-127 RIS Report Encroachment CAHRD Argyle-Higgins.docx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27.375
74.005
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9.705
57.003
8.545
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ARGYLE STREET
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134
10.075
10.075
130
10.075
24.217
24.216
14
15
16
17
25.71
ENCROACHMENT AREA: ±549.3 (±5913 ft²)
GRASSED WITHIN ENCROACHMENT AREA
PRESERVING EXISTING CURB ACCESS
METRIC
Date: 2013-AUG-01
District: LSWK
File: 32/6529
Scale: 1:500
Requested by: NW
Drawn by: MS
Reference Dwg No.: L1.0 - Phase 3 Site Plan Neeginan Village
ft3 Architecture Landscape Interior Design - Project No. 10281
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 regading the accuracy of such information.
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CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14531 / 1

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF THE ARGYLE STREET RIGHT-OF-WAY ADJACENT TO 155 HIGGINS AVENUE FOR THE PURPOSES OF ESTABLISHING A PAVED LOADING ZONE

Use:	Establishment of a paved loading zone to service an adjacent multi-tenant residential building
Licensee:	(C A H R D) Centre for Aboriginal Human Resource Development Inc. (hereinafter called the "Licensee")
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 14531/1, attached (hereinafter called the "Encroachment Area");
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Fees:	$3,468.75 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:	The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage: Commercial general liability insurance in the amount of at least two million dollars ($2,000,000) per occurrence, such liability policy to include the City of Winnipeg as an additional insured and contain evidence of contractual liability and cross liability clause; Automobile liability insurance for owned and non-owned automobiles used for or in connection with the Lease in the amount of at least two million dollars ($2,000,000.00); such insurance may be met through general liability cover, if applicable; 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 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:	Ninety (90) days written notice;
Conditions:	That the approval of this application by Council 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 obtains an extension of time from the Designated Officer – Encroachments;
	The Licensee understands and agrees that the 'Encroachment Area' is licensed on an "as is" basis.
	The City shall have the right to access the Encroachment Area at any time (twenty four hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment for any purpose including, without limitation, to maintain, operate, repair, inspect the Encroachment Area and any improvement thereon or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area.
	That if at any time during the term the City's use or requirements for the Encroachment Area reasonably necessitate the modification and/or removal of the Encroachment Area, the Licensee shall be responsible to do all things necessary to modify and/or remove the Encroachment Area as required by the City and to pay all costs and expenses associated therewith.
	The Licensee shall not assign the Encroachment Agreement or sublet the Encroachment Area without the prior consent of the Licensor.
	That all utilities be permitted 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 applicant will be at the expense of the Licensee.

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

Future electrical and/or gas service can be obtained from the local Manitoba Hydro District Office.

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

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;

Manitoba Hydro cautions the Licensee that a 60.3 millimetre steel gas main is located underneath the proposed encroachment area;

Manitoba Hydro is unable to determine where their existing facilities are located in relation to the proposed new lot(s). Manitoba Hydro 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.

Manitoba Hydro and Centra Gas cannot be held accountable for any disruption to the Encroachment Area between Higgins Avenue and Argyle Street should they need to access their facilities for any reason in the future;

Centra Gas Manitoba Inc. will require easements for existing facilities;

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Encroachment Area including, but not limited to; license fees, business tax, garbage removal, snow removal, security, etc. 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 Licensee acknowledges that there is a City owned four-hundred fifty millimetre combined sewer running down the centre of the Argyle Street right-of-way as well as two catch basins with leads and two manholes located on or near the subject Encroachment Area. The Licensee shall be responsible to ensure that the above noted infrastructure is protected and maintained in working order during construction. Any damage to the aforementioned water and sewer infrastructure must be repaired at the expense of the Licensee;

The Licensee shall not modify the existing private access (curb cut access) shown identified on Misc. Plan No. 14531/1 as "GRASSED WITHIN ENCROACHMENT AREA PRESERVING EXISTING CURB ACCESS" connecting the Encroachment Area to Higgins Avenue as part of the paving of the Encroachment Area. In the event that the Licensee damages the curb cut access, the Licensee shall repair the curb cut access, at its sole cost and expense, to the same condition that existed prior to the Licensee's work;

The Licensee shall release, 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 lands by the Licensee;

That if any removal, relocation or adjustment of existing MTS facilities is required, it will be at the expense of 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;

That the Licensee shall obtain all applicable permits prior to any development;

That snow removal in the Encroachment Area shall be the responsibility of the Licensee;

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, the Director of the Water and Waste Department, and by the City Solicitor/Director of Legal Services to protect the City's interests, subject to CAHRD approving any additional or amended terms and conditions which the City might include in the Encroachment Agreement, acting reasonably.

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, the Director of the Water and Waste Department, and by the City Solicitor/Director of Legal Services to protect the City's interests, acting reasonably.

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.

(C A H R D) CENTRE FOR ABORIGINAL HUMAN RESOURCES DEVELOPMENT INC. HEREBY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS `ENCROACHMENT AREA` ON THE ATTACHED MISC. PLAN NO. 14531/1 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

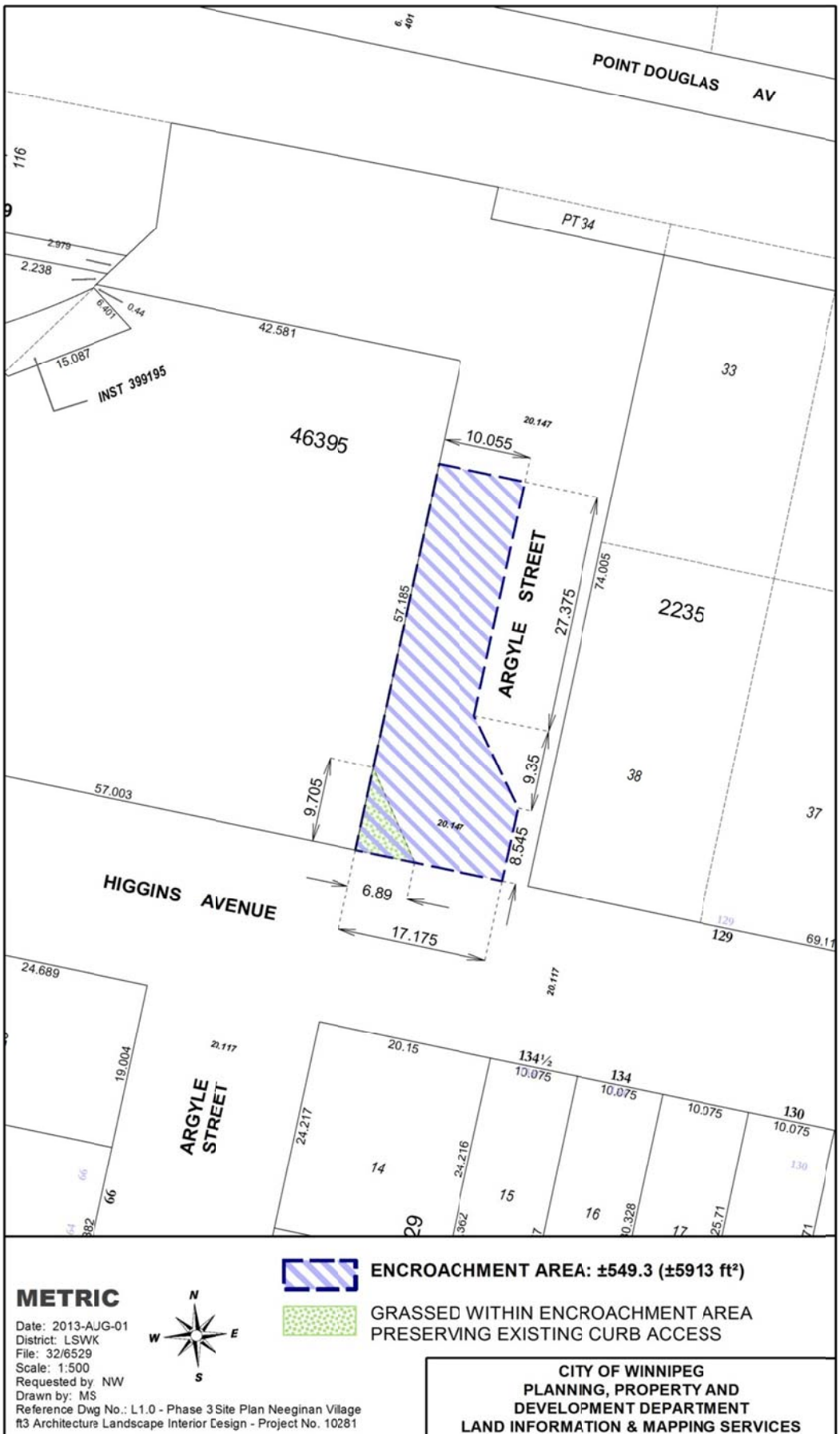
(C A H R D) CENTRE FOR ABORIGINAL HUMAN RESOURCES DEVELOPMENT INC.

Per: _____ Aug 20/13
DATE

ELEANOR PAULIC
NAME

SECRETARY
TITLE

I/We have been authorized to bind the Corporation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ARGYLE STREET
HIGGINS AVENUE
ARGYLE STREET
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74.005
24.689
19.004
20.15
24.217
24.216
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District: LSWK
File: 32/6529
Scale: 1:500
Requested by: NW
Drawn by: MS
Reference Dwg No.: L1.0 - Phase 3 Site Plan Neeginan Village
ft3 Architecture Landscape Interior Design - Project No. 10281
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES