Minutes – Executive Policy Committee – December 11, 2013

Minute No. 71
Report – Standing Policy Committee on Infrastructure Renewal and Public Works – December 9, 2013

Item No. 2 Front Ending Agreement for the Extension of Kildare Avenue West pursuant to the July 17, 2013 Council Decision
File DASZ 10/2013

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works and submitted the following to Council:

1. That the details of the draft Front Ending Agreement (Appendix "A") with Genstar Development Company for the construction of the Extension of Kildare Avenue West be received as information and the proposed terms be approved by Council.

2. That pursuant to the Council approved terms for the Development Agreement under File DASZ 10/2013, additional capital budget in the amount of $21.572 million be included in the 2015 budget process for inclusion in the 2020 Capital Forecast to facilitate the Extension of Kildare Avenue West. The $21.572 million is comprised of $14.6 million in construction cost (2013 dollars), $1.387 million in construction inflation, $0.423 million City overheads and $5.162 million in accrued interest.

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

Minutes – Executive Policy Committee – December 11, 2013

Report – Standing Policy Committee on Infrastructure Renewal and Public Works – December 9, 2013

DECISION MAKING HISTORY:

Moved by Deputy Mayor Swandel,

That the recommendation of the Standing Policy Committee on Infrastructure Renewal and Public Works be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On December 9, 2013, the Standing Policy Committee on Infrastructure Renewal and Public Works concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: ***Front Ending Agreement for the Extension of Kildare Avenue West pursuant to the July 17, 2013 Council Decision - File DASZ 10/2013***

Critical Path: **Standing Policy Committee on Infrastructure Renewal and Public Works – Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	B. Thorgrimson	M. Ruta CFO	D. Joshi A/CAO

RECOMMENDATIONS

1. That the details of the draft Front Ending Agreement (Appendix "A") with Genstar Development Company for the construction of the Extension of Kildare Avenue West be received as information and the proposed terms be approved by Council.

2. That pursuant to the Council approved terms for the Development Agreement under File DASZ 10/2013, additional capital budget in the amount of $21.572 million be included in the 2015 budget process for inclusion in the 2020 Capital Forecast to facilitate the Extension of Kildare Avenue West. The $21.572 million is comprised of $14.6 million in construction cost (2013 dollars), $1.387 million in construction inflation, $0.423 million City overheads and $5.162 million in accrued interest.

3. 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

Pursuant to Section 53(1) of The City of Winnipeg Charter, Council approval for the funding of this project is required. The terms of the front ending agreement must also be approved by Council.

IMPLICATIONS OF THE RECOMMENDATIONS

The Public Works Department is required to allocate capital funding for the extension of Kildare Avenue West pursuant to Council's approved terms for the proposed Development

Agreement under File DASZ 10/2013 that require the Developer to construct and front end finance the extension of Kildare Avenue West.

The Developer, Genstar Development Company, intends to finance (i.e. "front-end") the full cost of the works and, under the Front-Ending Agreement, the City will be obligated to pay Genstar the costs incurred to do the work plus interest.

HISTORY

On July 17, 2013, Council concurred in the recommendation of the Standing Policy Committee on Property and Development and approved a Subdivision and Rezoning at the southeast corner of Ravelston Avenue West and Peguis Street under File DASZ 10/2013. Genstar proposes to develop 209 single family lots, one "RMF-L" Residential Multi-family site, four "RMF-M" residential Multi-family sites, one "RMU" Residential Mixed Use site, five blocks for duplex or townhouse development zoned "RMF-S" residential Multi-family district and two small commercial sites zoned "C2" Commercial Community. The development will be called "Devonshire Village". It is estimated that phase one of this government business partnership (i.e. joint venture) will generate approximately $6 million in revenue for the City of Winnipeg.

Council's approval of the Subdivision and Rezoning included the requirements for the Developer to enter into both a Zoning Agreement and Development Agreement with the City. The proposed Development Agreement included the following clauses added by the East Kildonan/Transcona Community Committee at its meeting on June 18, 2013, namely:

48. The Developer shall, at no expense to the City, construct a two lane concrete roadway extension of Kildare Avenue West from Plessis Road, westward through the lands formerly known as the Public Works Yards and on an alignment agreeable to the City, and up to the easterly limit of the planned area on the Ravelston right-a-way (DASZ 10/13) which will represent the southerly lanes of Ravelston.

50. The Developer shall enter into a Front Ending Agreement with the City of Winnipeg that will repay the developer for all costs associated with said works in the above two clauses, plus interest at a rate agreeable to the City, within five years of said construction work. The Front Ending Agreement shall be subject to said works being constructed and completed prior to the issuance of the 51st single family building permit in DASZ 10/13, and provide greater detail on all the terms and conditions of all the timing, scope, interest rate, repayment dates and terms to be mutually agreeable by the City and the Developer and live up to the clear intent of the East-Kildonan Transcona Community Committee and as determined by and to the satisfaction of the Director of Public Works.

As illustrated in Appendix "B", the proposed two-lane roadway will extend from the government business partnership lands (DASZ 10/2013) to the east, bisecting the former Public Works Yard located at 1500 Plessis (DASZ 39/2013) and ultimately connect to Plessis Road. The construction of the roadway will enhance access to Devonshire Village and Transcona West from the existing Transcona area. The roadway will also enable the redevelopment of the decommissioned Public Works Yard, identified as a Major Redevelopment Site in Our

Winnipeg, which will ultimately remediate the site while expanding the City of Winnipeg's tax base. When complete, the extension of Kildare Avenue West will alleviate traffic, in particular on Regent Avenue, and result in improved pedestrian and vehicular traffic flow in Transcona.

The Public Works Department has produced a high level cost estimate to construct an extension of Kildare Avenue through the decommissioned City of Winnipeg yards tying into Ravelston Avenue, west of the railway (see Appendix "B"). The estimated cost, in 2013 dollars, is $14,600,000. After including inflation of 9.5% to reflect the timing of the planned works (i.e. spring 2014 to spring/summer 2015), the estimated cost is $15,987,000. Total accrued interest to the assumed repayment date of April 1, 2020 of $5,162,000 brings the total estimated developer payback amount to $21,149,000 (see Table 1 below). The addition of City of Winnipeg internal charges (i.e. short-term financing overheads) of $423,000 results in a total estimated capital budget requirement in 2020 of $21,572,000.

Table 1

FINANCING COSTS PROJECTION - PROPOSED KILDARE AVENUE EXTENSION

	2014	2015	2016	2017	2018	2019	2020	Total
Interest	326,000	793,000	878,000	920,000	967,000	1,017,000	261,000	5,162,000
Principal	12,790,000	3,197,000						15,987,000
	13,116,000	3,990,000	878,000	920,000	967,000	1,017,000	261,000	**21,149,000**

Assumptions

1) Total Estimated Cost of Kildare Avenue Extension as per Public Works - Engineering Division 15,987,000

- First draw on loan amount assumed to occur on April 1, 2014 & be repaid to Genstar's lender on April 1, 2020.
- Second draw on loan amount assumed to occur on October 1, 2014 & be repaid to Genstar's lender on April 1, 2020.
- Third draw on loan amount assumed to occur on April 1, 2015 & be repaid to Genstar's lender on April 1, 2020.

Balance Owing as at December 31, 2014	13,116,000
Balance Owing as at December 31, 2015	17,106,000
Balance Owing as at December 31, 2016	17,984,000
Balance Owing as at December 31, 2017	18,904,000
Balance Owing as at December 31, 2018	19,871,000
Balance Owing as at December 31, 2019	20,888,000
Balance Owing as at April 1, 2020	21,149,000

2) Estimated Interest Rate to be Charged on the Loan to Genstar 5.00%

- Interest assumed to be compounded monthly beginning in April 2014.
- Accrued interest assumed to be repaid to Genstar's lender on April 1, 2020.

3) Costs in 2014/15 include a 9.5% inflation factor on the costs projected in 2013 dollars.

The Public Works Department has advised that the roadway alignment as depicted in Appendix "B" will need to be modified which will result in a change to the size and shape of the

areas to the north and south of the proposed roadway. Further, the location and configuration of the proposed rail crossing will have to be approved by the railway authority.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 4, 2013

Project Name:

First Year of Program **2020**

Extension of Kildare Avenue West - Front Ending Agreement/Capital Budget Funding

	2020	2021	2022	2023	2024
Capital					
Capital Expenditures Required	$ 21,572,000	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ 21,572,000	$ -	$ -	$ -	$ -
Funding Sources:					
Cash-to-Capital		$ -	$ -	$ -	$ -
Debt - External	21,572,000	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ 21,572,000	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ 21,572,000				
Total Additional Debt Required	$ 21,572,000				
Current Expenditures/Revenues					
Direct Costs	$ -	$ 1,665,000	$ 1,665,000	$ 1,665,000	$ 1,665,000
Less: Incremental Revenue/Recovery	423,000	-	-	-	-
Net Cost/(Benefit)	$ (423,000)	$ 1,665,000	$ 1,665,000	$ 1,665,000	$ 1,665,000
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ (423,000)	$ 1,665,000	$ 1,665,000	$ 1,665,000	$ 1,665,000

Additional Comments: Capital expenditures consist of the estimated developer payback amount of $21.149 million (i.e. principal of $15.987 million + accrued interest of $5.162 million) + City overheads of $0.423 million. The latter amount represents 2% short-term financing charges and will be offset by recoveries in the current budget of the Corporate Finance Department. For the purposes of this analysis, it is assumed that financing for the capital budget will be external debt. Direct costs beginning in 2021 represent estimated debt and finance charges, to be included in the Public Works Department's operating budget, of $1.665 million/annum based on an assumed interest rate of 6% and a 30-year amortization period.

A review would be beneficial for developer payback agreements with respect to the timing of reporting of assets and liabilities as well as authorizations and financing for budget purposes.

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

CONSULTATION

In preparing this report there was consultation with:

Public Works Department
Legal Services Department (as to legal issues)
Corporate Finance Department
Genstar Development Company

SUBMITTED BY

Department: Planning, Property and Development
Division: Land Development, Geomatics and Land Information Systems
Prepared by: Marc Pittet
Date: December 5, 2013

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Appendix "A" Front Ending Agreement



Genstar Ravelston
Front Ending Agreeme

Appendix "B" Map of the Extension of Kildare Avenue West

Appendix "A"

FRONT-ENDING AGREEMENT TO EXTEND KILDARE AVENUE WEST FROM PLESSIS ROAD, WESTWARD UP TO THE EASTERLY LIMIT OF THE PLANNED AREA OF DASZ 10/2013 ON THE RAVELSTON AVENUE RIGHT-OF-WAY

THIS AGREEMENT dated this ___ day of _____ 2013

BETWEEN:

GENSTAR DEVELOPMENT PARTNERSHIP,
by its managing partner, GENSTAR DEVELOPMENT COMPANY
(Hereinafter called the "Developer")

OF THE FIRST PART

- and –

THE CITY OF WINNIPEG
(Hereinafter called the "City")

OF THE SECOND PART

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RECITALS

A. WHEREAS the Developer has made application to the City under File DASZ 10/2013 to subdivide and rezone certain land generally located south of Ravelston Avenue West and east of Peguis Street;

B. AND WHEREAS City Council approved the Developer's proposed plan of subdivision under File DASZ 10/2013 on July 17, 2013 subject to certain conditions;

C. AND WHEREAS it was a condition of approval that the Developer shall finance and construct a two lane concrete roadway extension of Kildare Avenue West from Plessis Road, westward through the lands formerly known as the Public Works Yards and on an alignment agreeable to the City, and up to the easterly limit of the planned area on the Ravelston right-of-way of DASZ 10/2013, which will represent the southern lanes of Ravelston;

D. AND WHEREAS the Developer shall construct the said extension and the City shall reimburse the Developer in accordance with the provisions of this Front-Ending Agreement;

E. AND WHEREAS the City has agreed to repay the Developer for all costs associated with the said work, plus interest, within five years of Substantial Performance of the construction work;

F. AND WHEREAS the Developer now wishes to proceed with the development of its Plan of Subdivision and the said roadway extension of Kildare Avenue West;

NOW THEREFORE in consideration of the covenants contained herein and such further consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. DEFINITIONS

1.1. **"Agreement"** means this Front-Ending Agreement, including the Recitals and Schedules.

1.2. **"Bank"** means Canadian Western Bank or such other lending institution acceptable to the City and the Developer.

1.3. **"City"** means The City of Winnipeg.

1.4. **"City Solicitor"** means the individual appointed to the position of Director of Legal Services and City Solicitor for the City, from time to time, or the person designated by such individual to carry out the duties contained herein.

1.5. **"Consulting Engineer"** means an engineering consulting firm acceptable to the City and Developer.

1.6. **"Contractor"** means the construction contractor or contractors the Developer selects and engages to construct the Transportation Infrastructure.

1.7. **"Cost of Borrowing"** means the interest incurred by the Developer in borrowing funds from the Bank to cover the Costs in Place. This cost is to be calculated daily on the daily closing balance of the loan, at the Interest Rate.

1.8. **"Cost Schedule"** means the estimated Costs in Place, as shown on the attached **Schedule "A"** to this Agreement.

1.9. **"Costs in Place"** means the costs actually incurred by the Developer including cost overruns, to be jointly approved by the Developer and the City, in connection with the construction of the Transportation Infrastructure as certified for payment by the Consulting Engineer.

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1.10. **"Developer"** means Genstar Development Partnership, managed by one of the partners namely Genstar Development Company, a corporation registered and carrying on business in the Province of Manitoba.

1.11. **"Developer Payments"** means the payment by the Developer of the invoices for Costs in Place and the cost of borrowing.

1.12. **"Director of Public Works"** means the individual appointed to the position of Director of Public Works for the City, from time to time, or the person designated by such individual to carry out the duties under this Agreement.

1.13. **"Interest Rate"** means a floating rate of interest equal to the following:

(i) If the prime lending rate the Bank charges its customers is four and a half percent (4.5%) or less, the prime lending rate the Bank charges its customers plus one half of one percent (0.5%);

(ii) if the prime lending rate the Bank charges its customers is between four and a half percent (4.5%) and five percent (5.0%), five percent (5.0%);

(iii) if the prime lending rate the Bank charges its customers is more than five percent (5.0%), the prime lending rate the Bank charges its customers.

For information, on December 2, 2013 the prime lending rate the Canadian Western Bank charged its customers was three percent (3.0%).

1.14. **"Plan of Subdivision"** means the Developer's proposed plan of subdivision under File DASZ 10/2013.

1.15. **"Transportation Infrastructure"** means the two lane roadway extension of Kildare Avenue West from Plessis Road, westward through the lands formerly known as the Public Works Yards and up to the easterly limit of the planned area of DASZ 10/2013 on the Ravelston right-of–way as generally illustrated in Schedule 'B" to this Agreement, Conceptual Plan of Transportation Infrastructure and including, but not necessarily limited to the following:

- 8.3m wide asphaltic concrete pavement between Plessis and the westerly project limit.
- Land Drainage Sewer along the entire length of the extended Kildare ROW
- Street lighting along the entire length of the extended Kildare Avenue ROW
- Modification to traffic signals at Plessis Road and Kildare Avenue West
- Railway crossing works at the extended Kildare Avenue and the Central Manitoba Railway rail line crossings
- Realignment of the existing Active Transportation (AT) path
- A 1.5 m sidewalk along the extended Kildare Avenue roadway

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- Boulevard sodding and trees along the south side of the extended Kildare Avenue roadway
- Soil remediation works along the Kildare Avenue extension through the City of Winnipeg property
- Applicable Engineering Fees
- All other works related to the extension of Kildare Avenue.

2. OBLIGATIONS OF THE DEVELOPER

2.1 The City shall approve the engagement of the Consulting Engineer by the Developer for the design of the Transportation Infrastructure and administration of contracts between the Developer and the Contractor. Any changes to the scope of the work being undertaken by the Consulting Engineer and the corresponding change to their fees as it relates to the Transportation Infrastructure shall be jointly agreed upon in writing by the Developer and the City.

2.2. Once the design and the plans and specifications for the construction of the Transportation Infrastructure have been finalized by the Consulting Engineer and released for construction by the Director of Public Works, the Developer shall call for tenders for the work required to construct the Transportation Infrastructure.

2.3 All bids received by the Developer in response to the tender call shall be evaluated by the Consulting Engineer. The Developer shall send to the Director of Public Works a written recommendation of bids it wishes to accept for the work required to construct the Transportation Infrastructure.

2.4 Upon acceptance of the above-noted recommendation by the Director of Public Works, the Developer shall enter into a Construction Contract with such Contractor for the construction of the Transportation Infrastructure.

2.5 The Developer together with the Consulting Engineer shall ensure that the Transportation Infrastructure is constructed in accordance with the design and the plans and specifications prepared by the Consulting Engineer as submitted to the Director of Public Works.

2.6 The Developer shall front-end the cost of construction of the Transportation Infrastructure including any cost overruns as jointly agreed upon in writing by the Developer and the City. Payment of the invoices or progress payments for the cost of construction of the Transportation Infrastructure shall only be made by the Developer following receipt of the Consulting Engineer's written certification of the invoices or progress payments and written approval by the City.

2.7 The Developer's payment of all invoices and progress payments shall be made in accordance with the provisions of *The Builders' Liens Act*.

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3 OBLIGATIONS AND ENTITLEMENTS OF THE CITY

3.1. The City agrees to reimburse the Developer for the roadway extension Developer Payments by no later than December 31, 2020. It is understood and agreed that the City may make payments prior to December 31, 2020, without penalty, upon providing to the Bank at least forty-eight (48) hours, notice which payments shall firstly be applied to accrued interest and then to principal if applicable.

4 LOAN AND ASSIGNMENT

4.1 The City acknowledges that the Developer intends to borrow funds in the approximate amount of $15,987,000.00 (amount represents $14.6 million estimated cost in 2013 dollars times an inflation factor of 9.5%) from the Bank to cover the cost of construction of the Transportation Infrastructure including any cost overruns jointly agreed to by the Developer and the City.

4.2 The City and the Developer agree that the interest rate to be charged on the loan from the Bank to cover the cost of construction of the Transportation Infrastructure including any cost overruns jointly agreed to by the Developer and the City, and the terms of repayment of the loan shall be at a rate and upon terms of repayment acceptable to the City and the Developer.

4.3 The City acknowledges that the Developer intends to transfer and assign to the Bank the Developer's right and entitlement to receive the Developer Payments from the City. The City hereby consents to any such assignments and agrees to honour same.

5 GENERAL

5.1 Notices and communications, including demands and certificates, made in connection with this Agreement must be in writing and delivered to the parties at the following addresses:

a) **To the City:**

The City of Winnipeg
Legal Services Department
3rd Floor, 185 King Street
Winnipeg, MB R3B 1J1

Attention: City Solicitor
Fax: (204) 947-9115

b) **To the Developer:**

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Genstar Development Company
530 Kenaston Boulevard, Suite 320
Winnipeg, MB R3N 1Z4

Attention: Mr. Jerry C. Klein, Vice -President
Fax: (204) 947-5696

5.2 For the purposes of this Agreement, any communication that is required to be in writing includes any electronic communications, and the parties hereto hereby waive their right to contest whether electronic communications constitute written notice and communication. The parties further agree that copies of any electronic communication will be admissible in any legal, administrative or other proceedings as conclusive evidence as to the content of the communication to the same extent as an original document in non-electronic form. The parties hereby acknowledge and agree that they cannot ensure confidentiality when non-secure electronic communications are used, as they may be intercepted by third parties, to which each party accepts the risk of any consequences arising from loss occurred in connection with the use of electronic communications.

5.3 When the notices and demands are made in connection with this Agreement are sent by:

a) mail, they are deemed to be received on the third (3rd) day after posting; and

b) by fax or electronic communication, they are deemed to be received at 9:00 a.m. on the business day following the day on which they were successfully faxed or sent.

5.4 Any party may change its address for service by written notice to the other party.

5.5 Either party may waive any breach by the other of any provision contained in this Agreement or default in the observance or performance of any covenant or condition required to be observed or performed by the other under the terms of this Agreement, provided that no such waiver shall be binding upon such party unless given in writing, and no such waiver shall extend or be taken to affect any subsequent breach or default or affect the right of the waiving party.

5.6 The Recitals and Schedules attached hereto shall form part of this Agreement.

5.7 This Agreement shall be governed by and interpreted according to the laws of the Province of Manitoba.

5.8 This Agreement may not be varied unless same is evidenced in writing signed by both of the parties hereto.

5.9 Time shall be of the essence hereof.

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5.10 The parties acknowledge that this Agreement contains the entire terms, conditions and warranties agreed to by the parties.

5.11 If any paragraph, subparagraph, clause or phrase of this Agreement is, for any reason, held to be invalid by the decision of any Court of competent jurisdiction, then the invalid portion shall be severed and the portion hereof that is declared invalid shall not affect the validity of the remainder hereof.

5.12 This Agreement constitutes and expresses the whole arrangement between the parties hereto. It is understood and agreed that there are no covenants, warranties, guarantees, promises or agreements (verbal or otherwise) between the parties other than those contained herein.

5.13 This Agreement shall be binding upon and enure to the benefit of the parties thereto and their respective successors and permitted assigns.

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IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first above written.

GENSTAR DEVELOPMENT PARTNERSHIP,
by its managing partner,
Genstar Development Company

Per: _____
Name:
Title:

Per: _____
Name:
Title

THE CITY OF WINNIPEG

Per: _____
Mayor

Per: _____
City Clerk

APPROVED AS TO LEGAL FORM:

_____
for Director of Legal Services and City Solicitor

APPROVED AS TO DETAILS:

_____
Director
Planning, Property and Development

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Schedule "A"

Estimated Cost Schedule for Works to construct the roadway extension of Kildare Avenue West from Plessis Road, westward through the lands formerly known as the Public Works Yards and up to the easterly limit of the planned area of DASZ 10/2013 on the Ravelston right-of–way.

Description of Work

- 8.3m wide asphaltic concrete pavement between Plessis and the westerly project limit.
- Land Drainage Sewer along the entire length of the extended Kildare ROW
- Street lighting along the entire length of the extended Kildare Avenue ROW
- Modification to traffic signals at Plessis Road and Kildare Avenue West
- Railway crossing works at the extended Kildare Avenue and the Central Manitoba Railway rail line.
- Realignment of the existing Active Transportation (AT) path
- 1.5 m sidewalk along the south side of the extended Kildare Avenue roadway
- Boulevard sodding and trees along the south side of the extended Kildare Avenue roadway
- Soil remediation works along the Kildare Avenue extension through the City of Winnipeg property
- Applicable Engineering Fees

Total Estimated Construction Costs

$ 14.6 Million

General Notes:

1. Estimated costs are based on conceptual plans.
2. Estimated costs are based on 2013 dollars, inflation allowance not included.
3. Costs do not include GST.

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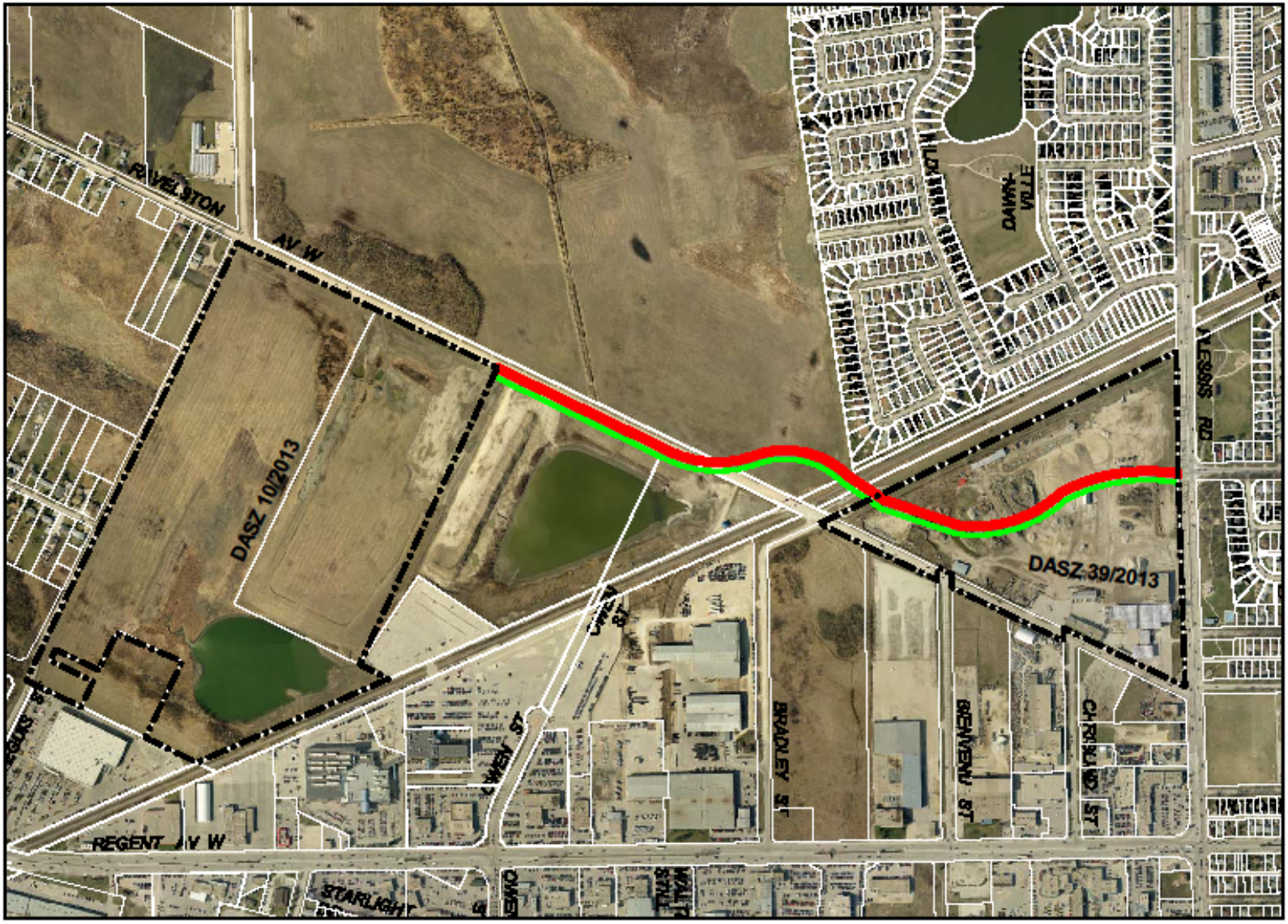
Schedule "B"
Conceptual Plan of Transportation Infrastructure



Appendix “B”



Kildare Avenue Extension