**Agenda – Council – March 26, 2014**

**Report – Standing Policy Committee on Property and Development – March 11, 2014**

**Item No. 15 Encroachment Agreement - Right-of-Way Between Fernbank Avenue and the North City Limit (Old Kildonan Ward)**

STANDING COMMITTEE RECOMMENDATION:

On March 19, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the following to Council:

1. That the terms and conditions attached as Schedule "A" for an encroachment agreement in favour of the Rural Municipality of West St. Paul for the purpose of a wastewater sewer and as more particularly identified on Misc. Plan No. 14636/1 be approved with the following amendment:

   A. That that the Rental amount be amended to accurately reflect the amount as determined by Council, or its delegated authority, in accordance with Recommendation #2 contained herein.

2. That the request of the Rural Municipality of West St. Paul to waive the Encroachment Fee as prescribed by The Planning, Development and Building Fees Bylaw No. 77/2009 be considered by the Standing Policy Committee on Property and Development in accordance with the Committee's authority to waive the prescribed fee pursuant to s.186 of The Planning, Development and Building Fees Bylaw No. 77/2009.

3. That the City enter into an encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

4. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

5. 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 – March 11, 2014**

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 19, 2014, 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 March 11, 2014, 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 City-Owned Right-of-Way Between Fernbank Avenue and the North City Limit for the Purposes of a Wastewater Sewer**

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

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| B. Erickson | B. Thorgrimson | M. Ruta | D. Joshi<br>A/CAO |

## RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule "A" for an encroachment agreement in favour of the Rural Municipality of West St. Paul for the purpose of a wastewater sewer and as more particularly identified on Misc. Plan No. 14636/1 be approved with the following amendment:

    a. That that the Rental amount be amended to accurately reflect the amount as determined by Council, or its delegated authority, in accordance with Recommendation #2 contained herein.

2. That the request of the Rural Municipality of West St. Paul to waive the Encroachment Fee as prescribed by The Planning, Development and Building Fees Bylaw No. 77/2009 be considered by the Standing Policy Committee on Property and Development in accordance with the Committee's authority to waive the prescribed fee pursuant to s.186 of The Planning, Development and Building Fees Bylaw No. 77/2009.

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4. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the final terms and conditions of the encroachment agreement and such other agreements as determined necessary by the City Solicitor/Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

5. 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 the Rural Municipality of West St. Paul.

## IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general, policy, regulatory, environmental or human resource implications to entering into an Encroachment Agreement shown on the attached Miscellaneous Plan No. 14636/1.

The Encroachment Agreement will allow the Rural Municipality of West St. Paul to install a wastewater sewer running parallel to Main Street beginning at Fernbank Avenue and ceasing at the North City Limit. This will allow West St. Paul access and utilization of the City's sewer system.

In addition to a one-time administrative fee of $250.00 plus GST, and in accordance with the City of Winnipeg Encroachment Bylaw No. 692/74, a rental fee of $3,937.50 plus GST has been attributed to this agreement.

As a result of shared services agreement(s) previously agreed upon between the Rural Municipality of West St. Paul and the City specifically pertaining to the exchange of goods and services in kind and any/all attributed benefits for the City, the Public Service recommends that the rental and administrative fees associated with the proposed encroachment agreement as contained herein be waived by the City.

## HISTORY

An application was submitted to the City's Zoning and Permits Branch by Stantec Consulting on behalf of the Rural Municipality of West St. Paul to develop and maintain a wastewater sewer running parallel with Main Street, beginning at Fernbank Avenue and ending at the north City limit.

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 the Rural Municipality of West St. Paul.

This report seeks approval of the Encroachment Agreement as negotiated in the attached Schedule A and subject also to the terms contained herein.

## FINANCIAL IMPACT

## Financial Impact Statement

**Date:** March 7, 2014

**Project Name:**

**First Year of Program** 2014

Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way Between Fernbank Avenue and the North City Limit for the Purposes of a Wastewater

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|---|---|---|---|---|---|
| **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 | 4,188 | 3,938 | 3,938 | 3,938 | 3,938 |
| Net Cost/(Benefit) | $ (4,188) | $ (3,938) | $ (3,938) | $ (3,938) | $ (3,938) |
| Less: Existing Budget Amounts | (4,188) | (3,938) | (3,938) | (3,938) | (3,938) |
| Net Budget Adjustment Required | $ - | $ - | $ - | $ - | $ - |

**Additional Comments:** Revenues in 2014 consist of the $3,938 annual encroachment fee + a one-time admin fee of $250. Revenues from 2015 onward consist of only the annual encroachment fee. Should Council decide to waive these fees, there would be no financial impact associated with the recommendations contained in this report.

*"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: | March 7, 2014 |
| PPD File No.: | MA2014-041 |
| RE File No.: | 5435 |

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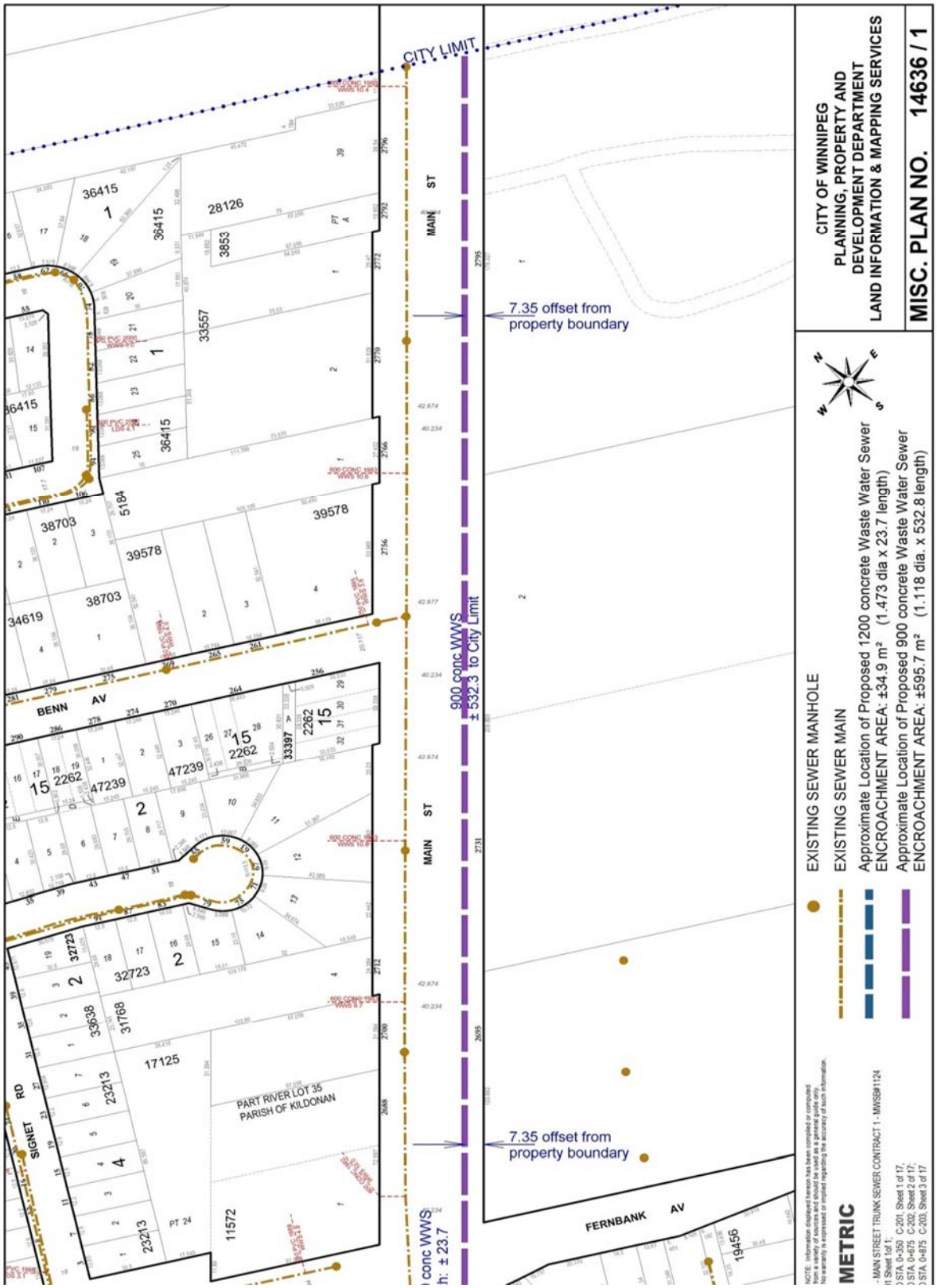
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14636 / 1
EXISTING SEWER MANHOLE
EXISTING SEWER MAIN
Approximate Location of Proposed 1200 concrete Waste Water Sewer
ENCROACHMENT AREA: ±34.9 m² (1.473 dia x 23.7 length)
Approximate Location of Proposed 900 concrete Waste Water Sewer
ENCROACHMENT AREA: ±595.7 m² (1.118 dia. x 532.8 length)
METRIC
CITY LIMIT
MAIN ST
BENN AV
SIGNET RD
FERNBANK AV
7.35 offset from property boundary
900 conc WWS
± 532.3 to City Limit
PART RIVER LOT 35
PARISH OF KILDONAN

## SCHEDULE A

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**PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR A PRIVATE SEWER PIPE BEGINNING AT FERNBANK AVENUE AND ENDING AT THE NORTH LIMIT OF THE CITY OF WINNIPEG**

| | |
|---|---|
| Use: | Wastewater sewer connecting the Municipality to the City's sewer services (hereinafter referred to as the 'Sewer') |
| Licensor: | The City of Winnipeg (herein called the "City") |
| Licensee: | The Rural Municipality of West St. Paul (herein called the "Municipality") |
| Area: | Shown and identified as 'Encroachment Area' on Misc. Plan No. 14636/1, attached (herein called the "Encroachment Area"); |
| Term: | Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council; |
| Fee: | ~~$3,937.50~~ $1.00 BTO 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:<br><br>General Liability insurance in the amount of at least twenty million dollars ($20,000,000.00) inclusive with the City added as an additional insured, including a cross-liability or severability of interest clause. Such liability policy to also contain coverage for contractual liability, owners and contractors protective liability, unlicensed motor vehicle liability, non-owned automobile liability, contingent employer's liability and products and completed operations liability;<br><br>Automobile liability insurance for owned automobiles to be used for or in connection with this agreement in the amount of at least five million ($5,000,000.00) inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence;<br><br>Environmental impairment liability insurance in an amount not less than five million ($5,000,000.00) dollars per claim and five million ($5,000,000.00) in the aggregate.<br><br>All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba;<br><br>Deductibles shall be borne by the Licensee;<br><br>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;<br><br>The Licensee shall file with the City a certificate of insurance in a form satisfactory for the City Solicitor;<br><br>The City shall have the right to alter the limits and/or coverage's as reasonably required from time to time during the continuance of this lease agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change; |

Cancellation: Three (3) years upon receipt of written notice by either party;

Conditions:

That the approval of this application by the Designated Officer – Encroachments is only valid for a period of six (6) 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 obtain an extension of time from the Designated Officer – Encroachments;

Licensee to comply with all laws, by-laws and regulations of any federal, provincial or municipal authority, and shall obtain all necessary permits pertaining to the use and occupancy of the Encroachment Area;

That if at any time during the term the City's use or requirements for the right-of-way reasonably necessitate the relocation and/or modification and/or removal of the Sewer, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the Sewer as required by the City and to pay all costs and expenses associated therewith;

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 Encroachment Area by the Licensee;

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, 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 shall not assign this agreement or sublet the Encroachment Area without the prior written consent of the City;

The Licensee shall permit all utilities be permitted to enter the Encroachment 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 Sewer will be at the expense of the Licensee. Prior to any digging or excavation, Manitoba Hydro and/or Centra Gas Manitoba Inc., the Licensee shall contact the Call-Before-You Dig line at 480-1212;

The Licensee will be responsible, at its sole cost and expense for any removal, relocation or adjustment of existing MTS facilities if required; The Licensee shall use extreme caution when excavating in the vicinity of 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;

Manitoba Hydro/Central Gas advise of the following conditions:

(i) Manitoba Hydro does not require new easement requirements. Their facilities in the area are covered by an existing easement;

(ii) Centra Gas Manitoba Inc. will require easements for existing facilities located in the area;

(iv) The Licensee can obtain Future electrical and/or gas service from the local Manitoba Hydro District Office

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

Any costs associated with the repair and maintenance, relocation and/or removal of the Sewer are the responsibility of the Licensee;

For all necessary Sewer work and maintenance, the Licensee shall employ only contractors that are licensed and approved annually by the pursuant to the provisions of The City of Winnipeg Sewer By-Law No. 92/2010. The Licensee shall ensure that each such licensed contractor files evidence of insurance with the City in accordance with the City's licensing requirements pursuant to The City of Winnipeg Sewer By-Law No. 92/2010 and maintains such insurance for the full term of the agreement;

The Licensee shall ensure that no other sewer connections are hooked up and connected to the Licensee's Sewer.

The Licensee shall obtain all applicable permits prior to any development or construction;

The Licensee shall enter into a formal agreement with the City embodying the foregoing terms and conditions and any other terms and conditions as are deemed necessary by the Acting Chief Administrative Officer or by the City Solicitor/Acting Director of Legal Services and in a form satisfactory to the City Solicitor/Acting Director of Legal Services as to form;

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;

**THE RURAL MUNICIPALITY OF WEST ST. PAUL HEREBY ACKNOWLEDGES AND AGREES WITH THE ABOVE TERMS AND CONDITIONS.**

**THE RURAL MUNICIPALITY OF WEST ST. PAUL:**

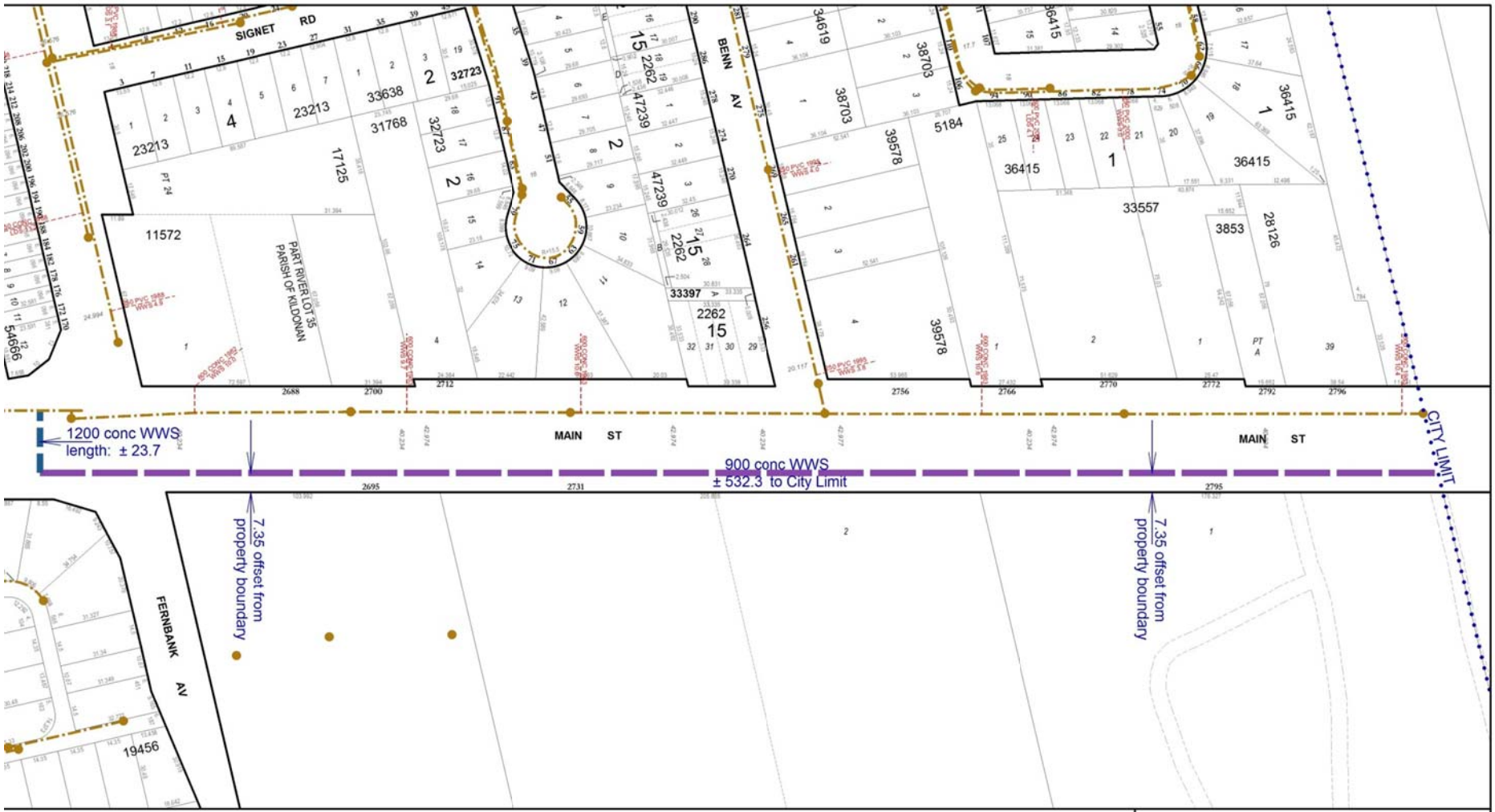
Per: Brent Olynyk

**NAME: Brent Olynyk**

**Title: Chief Administrative Officer**

Feb 28, 2014

**Date**

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ing No.'s KEY PLAN C-101 Sheet 1of 1;
d STREET-STA. 0+100 TO STA. 0+350 C-201, Sheet 1 of 17,
d STREET-STA. 0+350 TO STA. 0+675 C-202, Sheet 2 of 17;
d STREET-STA. 0+675 TO STA. 0+875 C-203, Sheet 3 of 17

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.

**METRIC**

EXISTING SEWER MANHOLE

EXISTING SEWER MAIN

Approximate Location of Proposed 1200 concrete Waste Water Sewer
ENCROACHMENT AREA: ±34.9 m² (1.473 dia x 23.7 length)

Approximate Location of Proposed 900 concrete Waste Water Sewer
ENCROACHMENT AREA: ±595.7 m² (1.118 dia. x 532.8 length)

**CITY OF WINNIPEG**
**PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT**
**LAND INFORMATION & MAPPING SERVICES**

**MISC. PLAN NO. 14636 / 1**