Agenda – Council – June 25, 2014

Report – Standing Policy Committee on Property and Development – June 10, 2014

Item No. 5 Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way Adjacent to 540 St. Anne's Road and Bishop Grandin Boulevard for the Purpose of Developing and Maintaining a Parking Area

STANDING COMMITTEE RECOMMENDATION:

On June 18, 2014, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development submitted the following to Council:

1. That the terms and conditions attached as Schedule "A" for an encroachment agreement in favour of Entegra Credit Union Limited (hereinafter referred to as the "Licensee") for the purpose of developing and maintaining a parking area identified as "Encroachment Area" on Misc. Plan 14221/4 be approved. (hereinafter referred to as the "Lands").

2. 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.

3. That the authority be delegated to the Director of Planning, Property & Development 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.

4. 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 – June 10, 2014

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 18, 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 June 10, 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 Adjacent to 540 St. Anne's Road and Bishop Grandin Boulevard for the Purpose of Developing and Maintaining a Parking Area**

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

AUTHORIZATION

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

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule "A" for an encroachment agreement in favour of Entegra Credit Union Limited (hereinafter referred to as the "Licensee") for the purpose of developing and maintaining a parking area identified as "Encroachment Area" on Misc. Plan 14221/4 be approved. (hereinafter referred to as the "Lands")

2. 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.

3. That the authority be delegated to the Director of Planning, Property & Development 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.

4. 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 Entegra Credit Union Limited.

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 Plans No. 14221/4.

The Public Works Department has provided notice to the Planning, Property and Development Department that the Lands is part of a larger parcel that is to be utilized to accommodate a future interchange at Bishop Grandin Boulevard and St. Anne's Road. More specifically the Encroachment Area is the future location for an off-ramp from Bishop Grandin Boulevard to St. Anne`s Road. No timeline exists as to when this project will be undertaken. The Licensee is aware of the aforementioned plans.

HISTORY

In 2012, the Licensee approached the City with an inquiry to purchase the south-west parcel of land adjacent to Bishop Grandin Boulevard and St. Anne`s Road. The Public Works Department advised that the parcel in question was to be utilized for a future traffic upgrade and a sale was subsequently rejected.

The Licensee inquired as to the possible lease of the Lands of which the Planning, Property and Development Department negotiated terms and conditions with the Licensee.

On March 14, 2013 the Delegation of Authority of the Manager of Real Estate was utilized to adopt the terms and conditions of a lease agreement between the City and Entegra Credit Union Limited.

The area under lease required rezoning to allow for parking, a process that was estimated to take roughly 6-12 months.

An alternate plan was devised to allow the Licensee more expedient access to the Lands. This involved the Public Works Department opening the Lands as right-of-way immediately as it was estimated that this would occur within the next ten years to facilitate a major traffic upgrade. The Urban Planning Division, working in conjunction with Public Works enacted this plan and it was adopted by Council on November 5, 2013 as DAO 5/2013.

Following the adoption of DAO 5/2013 the prior lease agreement between the City and Entegra Credit Union Limited was deemed invalid as an encroachment agreement would now be required to allow the Licensee access to City right-of-way.

An application was submitted to the City's Zoning and Permits Branch to develop and maintain a parking area at 540 St. Anne`s Road.

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 Entegra Credit Union Limited.

This report seeks approval of the Encroachment Agreement as negotiated.

Financial Impact Statement — Date: May 21, 2014

Project Name: — **First Year of Program 2014**

Proposed Encroachment Agreement to Allow for the Use of City-Owned Right-of-Way Adjacent to 540 St. Anne's Road and Bishop Grandin Boulevard for the Purpose of Developing and Maintaining a Parking Area

	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	5,866	10,731	10,731	10,731	10,731
Net Cost/(Benefit)	$ (5,866)	$ (10,731)	$ (10,731)	$ (10,731)	$ (10,731)
Less: Existing Budget Amounts	(5,866)	(10,731)	(10,731)	(10,731)	(10,731)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2014 consist of the $10,731 annual encroachment fee pro-rated for an assumed commencement date of July 1, 2014 + an initial admin fee of $500. Amounts from 2015 onward represent the annual encroachment fee only.

original signed by
Joseph Chammartin, CGA
Acting Manager of Finance

FINANCIAL IMPACT

CONSULTATION

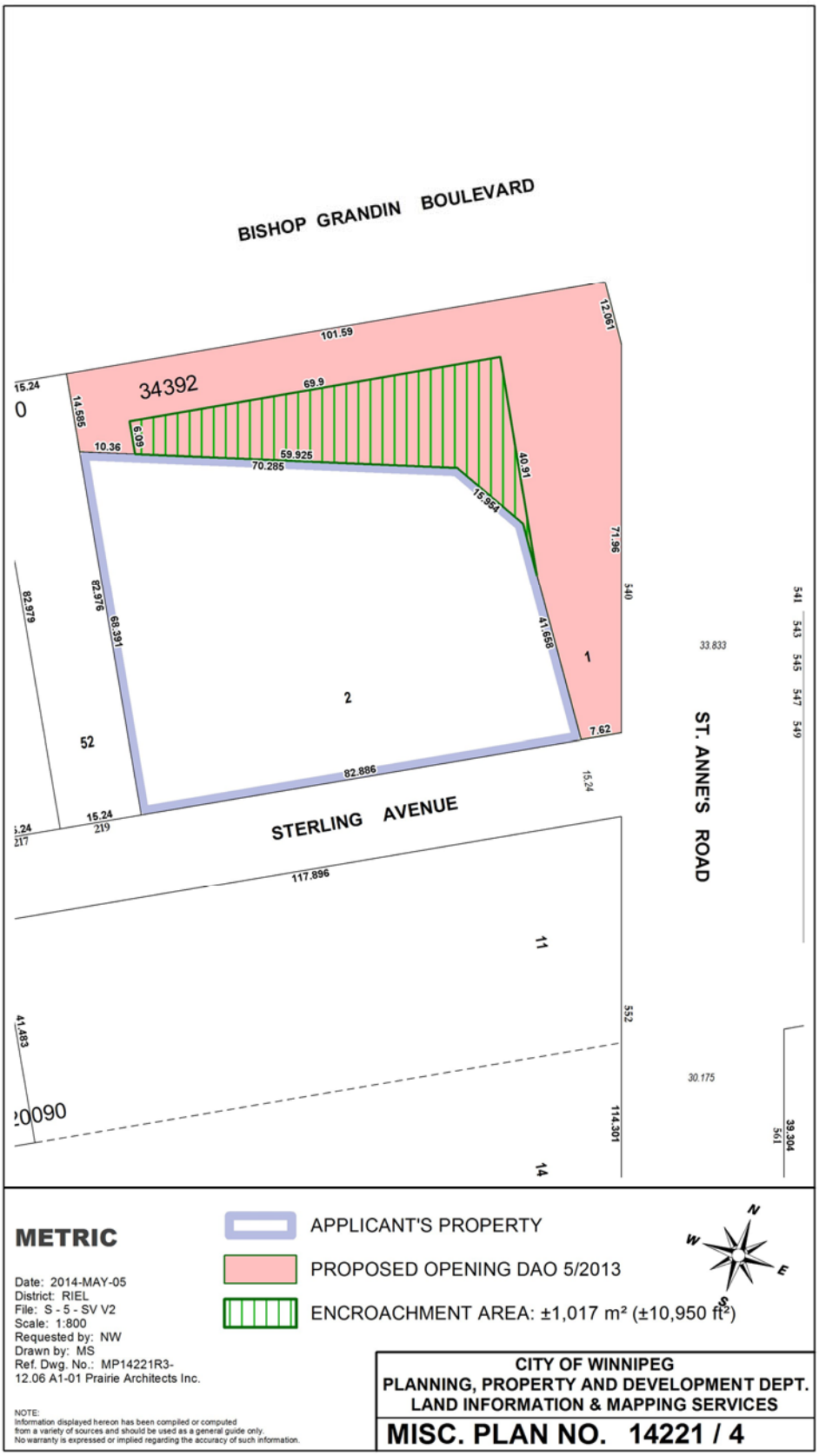
In preparing this report there was consultation with:

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:	May 26, 2014
RE File No.:	S-V-5
PPD File No.:	MA2014-013

O:\Reports Directive\Municipal Accommodations\Leases\2014\MA2014-103 - Proposed Encroachment Agrt - Use of City-owned Right of Way to 540 St. Anne's Rd & Bishop Grandin for Developing and Maintaining a Parking Area.docx


BISHOP GRANDIN BOULEVARD
34392
101.59
12.061
69.9
14.595
6.09
10.36
59.925
70.285
40.91
15.954
71.96
82.979
82.976
68.391
41.658
1
2
52
7.62
82.886
15.24
STERLING AVENUE
117.896
ST. ANNE'S ROAD
33.833
541
543
545
547
549
11
552
41.483
30.175
114.301
39.304
561
14
METRIC
Date: 2014-MAY-05
District: RIEL
File: S - 5 - SV V2
Scale: 1:800
Requested by: NW
Drawn by: MS
Ref. Dwg. No.: MP14221R3-
12.06 A1-01 Prairie Architects Inc.
APPLICANT'S PROPERTY
PROPOSED OPENING DAO 5/2013
ENCROACHMENT AREA: ±1,017 m² (±10,950 ft²)
N
W
E
S
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.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14221 / 4

SCHEDULE A

PROPOSED TERMS & CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF PUBLIC RIGHT-OF-WAY ADJACENT TO BISHOP GRANDIN BOULEVARD, ST. ANNE'S ROAD, AND STERLING AVENUE FOR THE PURPOSES OF PARKING

Landlord:	1. City of Winnipeg (herein called the "City");
Tenant:	2. Entegra Credit Union Limited;
Encroachment Area Affected:	3. City-owned land bound by Bishop Grandin, St. Anne's and Sterling identified on Misc. Plan 14221/4 as "Encroachment Area" and hereinafter referred to as "the Encroachment Area";
Area:	4. ± 1,017 m^2 (± 10,950 ft^2);
Use:	5. Paved Parking lot only;
Term:	6. Five (5) years commencing July 1, 2014 or the first of the month following approval from the City's Standing Committee and Council or its delegated authority if received later than July 1, 2014;
Renewal:	7. One five (5) year option to renew, at a rental rate based on market rates at the time the Tenant exercises its option(s) to renew, which at no time shall be less than the previous period rental rate. The Tenant to notify The Landlord of its intent to renew not less than six (6) months prior to expiry of term or each renewal;
Rent:	8. $10,731.00.00 plus GST per annum or $894.25.00 per month plus GST, during the first five years of the Term.. Annual payments to be received by the lease commencement date and the anniversary of the commencement date of each year of the agreement and monthly payments to be received by the first of each month;
	9. Fees to be 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;
Admin Fee:	10. A one-time administration fee of $500.00 plus GST;
Taxes:	11. Tenant responsible for 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 Encroachment Area;
Cancellation:	12. Six (6) months written notice by the City;
Insurance:	13. To indemnify and keep indemnified the City from and against all claims for damages which arise out of the use of the Encroachment Area by the Tenant;
	14. To further safeguard the City, the Tenant shall purchase and keep in force, during the full term of the agreement, a Comprehensive General Liability Policy including but not limited to the following provisions:

Initials

i) The City of Winnipeg to be added as an Additional Insured;

ii) Policy to contain a Cross-Liability Clause;

iii) Minimum limits of $2,000,000.00 inclusive;

15. Deductibles shall be borne by the Tenant;

16. The Tenant shall not cancel or cause any such policy or policies to lapse without minimum thirty (30) days prior written notice to the City of Winnipeg;

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

18. The Tenant shall file with the City a certificate of insurance in a form satisfactory to the City Solicitor;

19. The City shall have the right to alter the limits and/or coverage as reasonably required from time to time during the continuance of this agreement;

Conditions:

20. 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 applicant 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;

21. The Licensee understands and agrees that the 'Encroachment Area' is licensed on an "as is" basis.

22. The Tenant is not to erect or permit the erection of any sign, building or other structure upon the Encroachment Area, whether underground, surface and/or above ground, whether permanent or temporary, whether having a foundation or not, not to make any excavation therein nor place any fill thereon without having first obtained the prior written approval of the City's Director of Planning, Property and Development (herein called the "Director"). Provided however that it shall not be an unreasonable request for the Director to ask for detailed plans and specifications for the proposed sign, building or structure for the purposes of reviewing the Tenant's request for approval;

23. No private approaches shall be permitted to and/or from the Encroachment Area to St. Anne's Road or Bishop Grandin Boulevard;

24. The Tenant acknowledges and agrees that the Encroachment Area contains existing foundation material and that the Tenant is solely responsible for doing whatever is necessary to prepare and maintain the Encroachment Area for the use including, but not limited to, the removal of existing foundation material;

25. The Tenant is 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;

26. The Tenant to maintain at its own expense the Encroachment Area in a clean and tidy condition to the satisfaction of the Director;

Initials

27. 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;

28. The City shall have the right of access to the Encroachment Area at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or without equipment to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area;

29. The Tenant is not to assign or sub-let or part with possession of all or any part of The Encroachment Area without the Tenant first obtaining the prior written approval of the Director, such consent not to be unreasonably withheld. Any assignment not to relieve the Tenant of its obligations;

30. 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;

31. In the event of the Tenant being in default of any terms and conditions contained herein, and such default is not remedied within ten (10) days of written notice to the Tenant by the City, the Agreement is subject to immediate cancellation by the City;

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

33. Manitoba Hydro/Central Gas advise of the following conditions:

    (i) The Licensee shall be responsible for any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the proposed encroachment;

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

    (iii) 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;

    (iv) Please be advised that no easements are required as a result of this application. However it must be noted that there are electric facilities in the area; (see attached

Initials

schedule B for approximate locations)

(v) Manitoba Hydro and Centra Gas cannot be held accountable for any disruption to the proposed parking lot at this location should they need to access their facilities for any reason in the future;

34. The Water and Waste Department has no objections to the encroachment subject to the following:

    (i) There must not be any catch basins, catch basin leads and/or other water/sewer infrastructure installed on the City owned portion of the proposed parking lot within this encroachment area. The developer may need to re-grade the site to accommodate this requirement.

35. The Public Works Department does not object to the application subject to the following:

    (i) That no snow from the parking lot be moved or stored outside the encroachment area within the Bishop Grandin Boulevard or St. Anne's Road rights-of-way.

36. The Tenant acknowledges and agrees that the Encroachment Area is reserved for future Public Works.

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

38. Upon termination, cancellation or expiry of the Agreement, the Tenant shall remove its property (including but not limited to any asphalt that may be installed) and improvements from the Encroachment Area, at its expense, and leave same in a condition satisfactory to the City. Should the Tenant default in doing so, the City may remove the Tenant's property and improvements and restore the Encroachment Area at the sole risk and expense of the Tenant.

39. In the event that the Agreement is terminated or cancelled by the City for any reason or for no reason, the City shall not be required to provide alternative parking stalls for the business located at 540 St. Anne's Road and the Tenant is not entitled to any compensation whatsoever.

This proposal is subject to final approval by the City of Winnipeg's Council, or its delegated authority. If approval is received, 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 form satisfactory to the City Solicitor/Director of Legal Services.

Initials

ENTEGRA CREDIT UNION LIMITED HEREBY ACKNOWLEDGES AND AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE AREA IDENTIFIED AS "ENCROACHMENT AREA" ON MISC. PLAN 14221/4 ATTACHED IN ACCORDANCE WITH THE TERMS AND CONDITIONS AS OUTLINED HEREIN ON THIS SCHEDULE "A".

DATED THE 23RD OF MAY, 2014.

ENTEGRA CREDIT UNION LIMITED

Per:_____ Per:_____

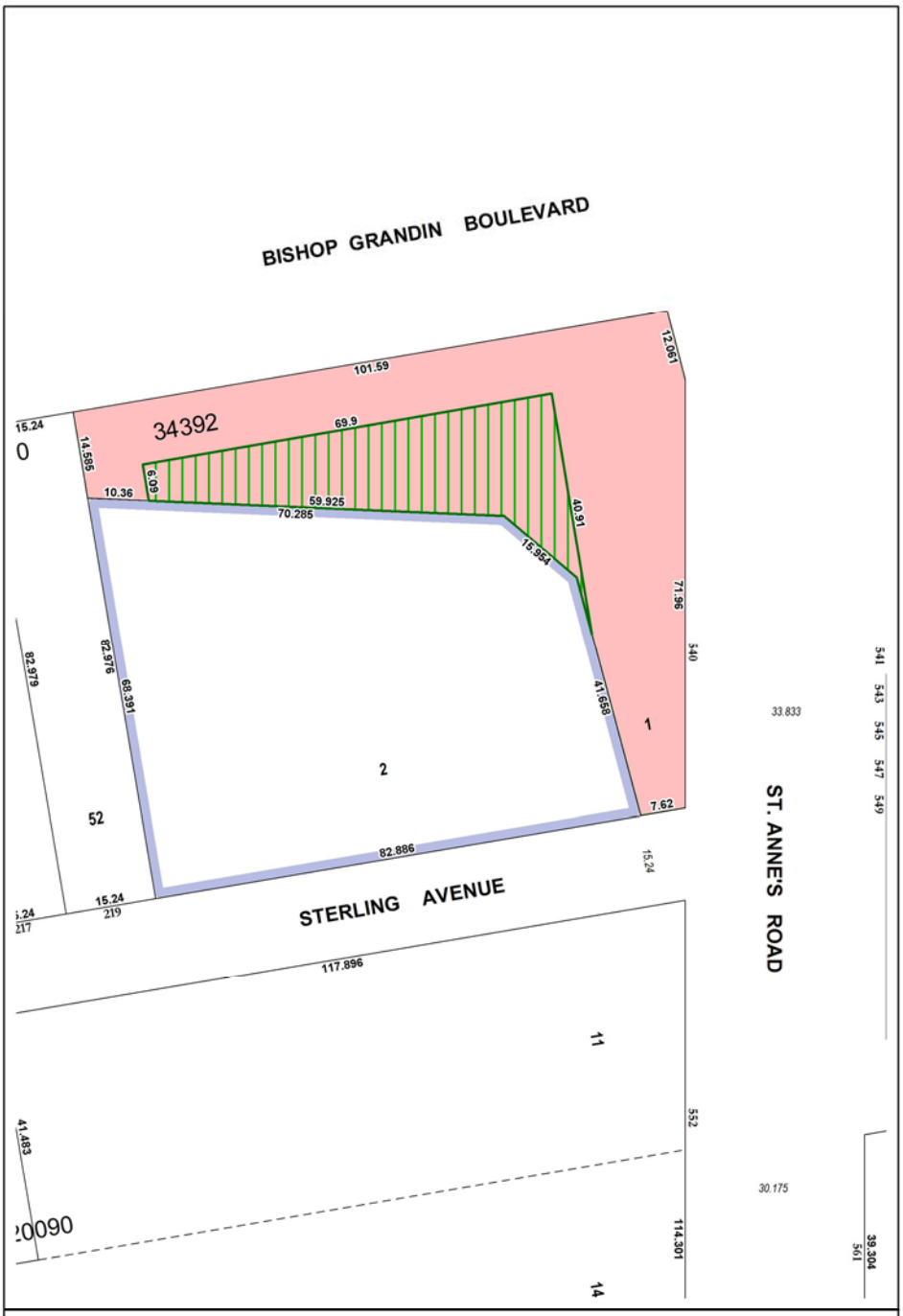
Print Name: BRIAN CHARLES Print Name:

Title: CHIEF OPERATING OFFICER Title:

I/we have the authority to bind the corporation

V:\Nolan Winters\(a) S-V-5\Terms and Conditions Mar 1.docx

Initials



METRIC

Date: 2014-MAY-05
District: RIEL
File: S - 5 - SV V2
Scale: 1:800
Requested by: NW
Drawn by: MS
Ref. Dwg. No.: MP14221R3-12.06 A1-01 Prairie Architects Inc.

NOTE:
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APPLICANT'S PROPERTY

PROPOSED OPENING DAO 5/2013

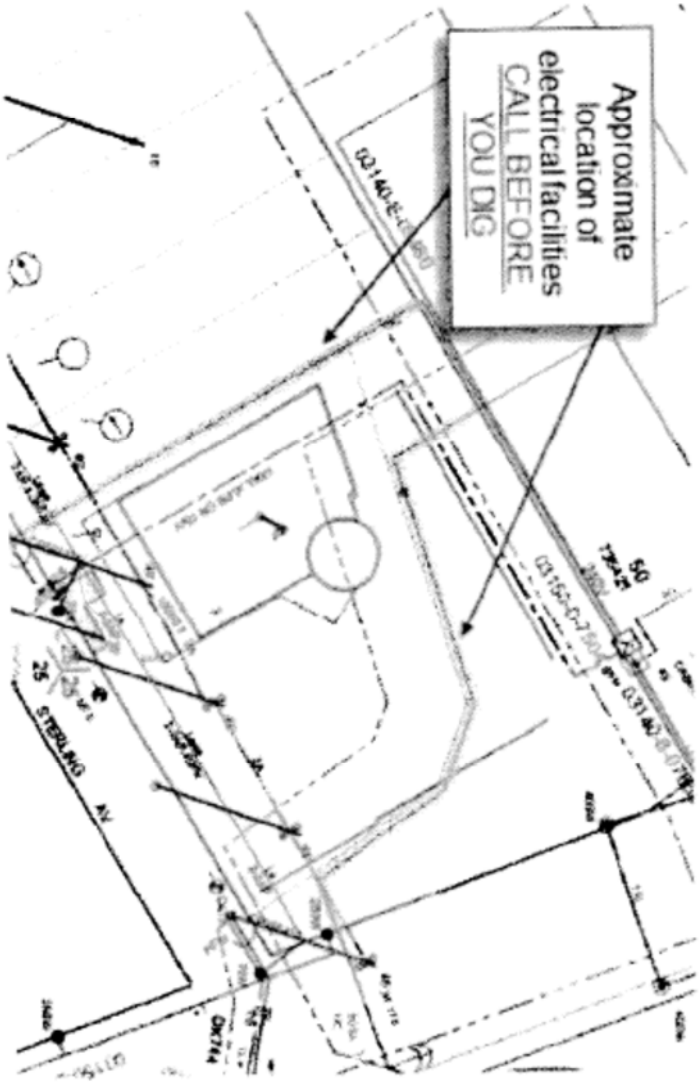
ENCROACHMENT AREA: ±1,017 m² (±10,950 ft²)

N W E S

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES

MISC. PLAN NO. 14221 / 4

SCHEDULE B


Approximate location of electrical facilities
CALL BEFORE YOU DIG
25
STERLING AV