Minute No. 613
Report – Standing Policy Committee on Property and Development – September 15, 2015

Item No. 15 Encroachment Agreement between 6779264 Manitoba Ltd. and the City of Winnipeg

COUNCIL DECISION:

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

1. That the proposed terms and conditions attached hereto and referred to as Schedule "A" for an encroachment agreement in favour of the 6779264 Manitoba Ltd., for placement of air handling units and fencing, and as identified as the "Encroachment Area" on Misc. Plan No. 14871 be approved.

2. That the City enter into an encroachment agreement 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 and Development to negotiate and approve the final terms and conditions of the encroachment agreement, 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 – September 15, 2015

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 23, 2015, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On September 15, 2015, 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: **Encroachment Agreement Between 6779264 Manitoba LTD. and the City of Winnipeg**

Issue: **Placement of air handling units and fencing, adjacent to building at 422 Jarvis Avenue**

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

AUTHORIZATION

Author	Department Head	CFO	CAO/COO
B. Erickson	M. Pittet	M. Ruta	M. Ruta A/CAO

RECOMMENDATIONS

That the Standing Policy Committee on Property and Development recommend that Council approve the following:

1. That the proposed terms and conditions attached hereto and referred to as Schedule "A" for an encroachment agreement in favour of the 6779264 Manitoba Ltd., for placement of air handling units and fencing, and as identified as the "Encroachment Area" on Misc. Plan No. 14871 be approved.

2. That the City enter into an encroachment agreement 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 and Development to negotiate and approve the final terms and conditions of the encroachment agreement, 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

In accordance with the Council Order of July 18, 1979, the Standing Policy Committee on Property and Development shall authorize the leasing or rental of City property and right-of-way for which the Director of Planning, Property and Development has no authority.

In accordance with Encroachment By-law 692/74, General Regulations, 4. (1) d, which 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 and Development Department has negotiated the proposed terms and conditions of an encroachment agreement as set out in attached Schedule "A" in favour of 6779264 Manitoba Ltd. for the use of land located adjacent to 422 Jarvis Avenue and identified as "Encroachment Area" on attached Miscellaneous Plan No. 14871.

EXECUTIVE SUMMARY

Application of an Encroachment Agreement for placement of air handling units and fencing adjacent to 422 Jarvis Avenue, as specified in the History section of this report.

IMPLICATIONS OF THE RECOMMENDATIONS

1. The Planning, Property and Development Department has determined that there are no general, policy, regulatory, environmental or human resource implications to entering into an Encroachment Agreement as set out in the attached Proposed Terms and Conditions, Schedule "A".

2. An annual continuing term with cancellation provision will allow for 6779264 Manitoba Ltd to place air handling units and fencing on the Encroachment Area, while maintaining the lands. Should the City of Winnipeg require this right-of-way for future projects, the ninety (90) day cancellation provision will allow for this.

3. The City will benefit from this agreement by formally issuing all maintenance costs to 6779264 Manitoba Ltd.

4. The opportunity to repurpose the adjacent long vacant commercial building (aka Winnipeg Cold Storage) will benefit the area as well as create new jobs.

5. There will be no expenses incurred by the City as a result of this Agreement.

HISTORY

The property at 422 Jarvis (former Winnipeg Cold Storage building) was purchased by 6779264 Manitoba Ltd. in February 2014. This long vacant building has been repurposed into a manufacturing facility for medicinal marijuana.

Bonify Medical Cannabis has completed construction to the facility, including the installation of air handling units on the subject Encroachment Area. They originally believed this area was part of their property; however, after learning that this was untrue the appropriate documentation was submitted for an encroachment application.

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 has reviewed the insurance requirements for this proposed lease and 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 6779264 Manitoba Ltd.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: August 17, 2015

Project Name:

First Year of Program **2015**

Encroachment Agreement Between 6779264 Manitoba LTD. and the City of Winnipeg

	2015	2016	2017	2018	2019
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	743	1,938	1,938	1,938	1,938
Net Cost/(Benefit)	$ (743)	$ (1,938)	$ (1,938)	$ (1,938)	$ (1,938)
Less: Existing Budget Amounts	(743)	(1,938)	(1,938)	(1,938)	(1,938)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2015 consist of a one-time admin fee of $250 + annual rent of $1,937.50 pro-rated for an assumed commencement date of October 1st. Revenues from 2016 onward represent the annual rental amount. Municipal tax implications are immaterial and have been excluded from this analysis.

"Original signed by"
Cheryl Turman, CPA, CA
A/Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Legal Services (as to legal issues)
Risk Management (as to insurance requirements)

OURWINNIPEG POLICY ALIGNMENT

03-2 Vitality: (Direction #1): Strive to Eliminate Derelict Buildings
The proposed encroachment is part of the redevelopment of the former Winnipeg Cold Storage building, which has been vacant for many years and purchased by 6779264 Manitoba Ltd. in 2014.

SUBMITTED BY

Department:	Planning, Property and Development Department
Division:	Municipal Accommodations
Prepared by:	Julian Roberts, Real Estate Officer 2
Date:	August 19, 2015
File No.:	MA2015-188

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SCHEDULE A

PROPOSED TERMS AND CONDITIONS OF ENCROACHMENT AGREEMENT

ON THE EAST SIDE OF 422 JARVIS AVENUE
Identified as "Encroachment Area"
On Attached Misc. Plan No 14871

Use:	For the placement of air handling units and fencing, identified as "Encroachment Area" on Misc. Plan No. 14871, attached (hereinafter referred to as the "Encroachment Area")
Licensee:	6779264 Manitoba Ltd. (hereinafter referred to as the "Licensee");
Term:	Annual continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Encroachment Fee:	**$1937.50** plus GST annually, receipt which is hereby acknowledged;
Admin Fee:	One time fee of **$250.00** plus GST payable on the commencement date;
Taxes:	The Licensee is to pay such taxes, rates, including local improvements and charges assessed for the Encroachment Area in the same manner as if the Encroachment Area and any improvements thereon had been entered on the assessment roll of the City as privately owned and subject to taxation;
Insurance:	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 Licensee; To further safeguard the City, the Licensee shall purchase and keep in force, during the full term of the agreement the following insurances: (i) Commercial general liability insurance in the amount of at least two million dollars $2,000,000 per occurrence with The City of Winnipeg to be added as an additional insured. Such policy to also include a cross liability clause and contractual liability; All policies shall 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 or cause any such policy or policies to lapse without minimum thirty (30) days prior written notice to the City of Winnipeg;

The Licensee 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;

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

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;

In addition to the above, the Licensee shall ensure that any and all contractors and/or subcontractors hired in connection with the development and/or maintenance of the encroachment area, maintain commercial general liability insurance in the amount of $2,000,000 per occurrence. Such insurance to include a cross liability clause, contractual liability clause, non-owned automobile liability and products and completed operations;

City's Option To Cancel: The proposed Encroachment Agreement may be terminated on 270 days notice by the City only or immediately by default;

Other: 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;

The Licensee understands and agrees that they are licensing the Encroachment Area on an "as is" basis;

Licensee 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;

The redevelopment of the Encroachment Area shall be performed at the sole cost, expense and effort of the Licensee;

The Licensee shall not erect or permit the erection of any building or other structure, other than the works referred to herein, nor make any excavation other than that required for the works referred to herein, and shall not place fill upon the Encroachment Area or on the lands adjacent to the Encroachment Area;

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 Works, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the works as required by the City and to pay all costs and expenses associated therewith;

Immediately following construction or dismantling of works within the Encroachment Area, the Licensee agrees to restore the Encroachment Area and the adjacent lands, including but not limited to the public right-of-way, to a condition at least equal to the condition that existed prior to construction. The Licensee shall be responsible for any and all damages to the Encroachment Area and permitted structures in the Encroachment Area and adjacent lands, including but not limited to the public right-of-way, resulting from its use and occupation of the Encroachment Area;

The Licensee shall obtain all permits required to develop, occupy and utilize the Encroachment Area for its intended use prior to commencement of any works within the Encroachment Area;

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 to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the Encroachment Area. City employees and contractors are required to be accompanied by personnel of the Licensee when accessing the Encroachment Area;

The City reserves the right to allow MTS Communications Inc., Centra Gas (Manitoba) Inc., The Manitoba Hydro-Electric Board and/or other public utilities to enter upon the Encroachment Area for maintenance and/or repair of their utilities;

Manitoba Hydro/Central Gas advises of the following conditions:

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

(ii) 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;

(ii) Please be advised that no easements are required as a result of this application.

(iii) That if any removal or relocation of any existing public utilities i.e. Centra Gas, MTS, sewer and water, etc., are required as a result of the proposed work, all removal or

relocation work will be performed at the sole cost, expense and effort of the Licensee.

Public Works Division advises of the following conditions:

(i) The encroachment is subject to removal if required by a future expansion of the Slaw Rebchuk Bridge.

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 shall not assign this agreement or sublet the Encroachment Area without the prior consent of the City.

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 and by the City Solicitor/Director of Legal Services to protect the City's interests.

The Licensee agrees to enter into an appropriate Encroachment Agreement with the City embodying the within terms and conditions and in a form satisfactory to the City Solicitor/Manager of Legal Services.

This proposal is subject to final approval by the City of Winnipeg's Council, or its delegated authority.

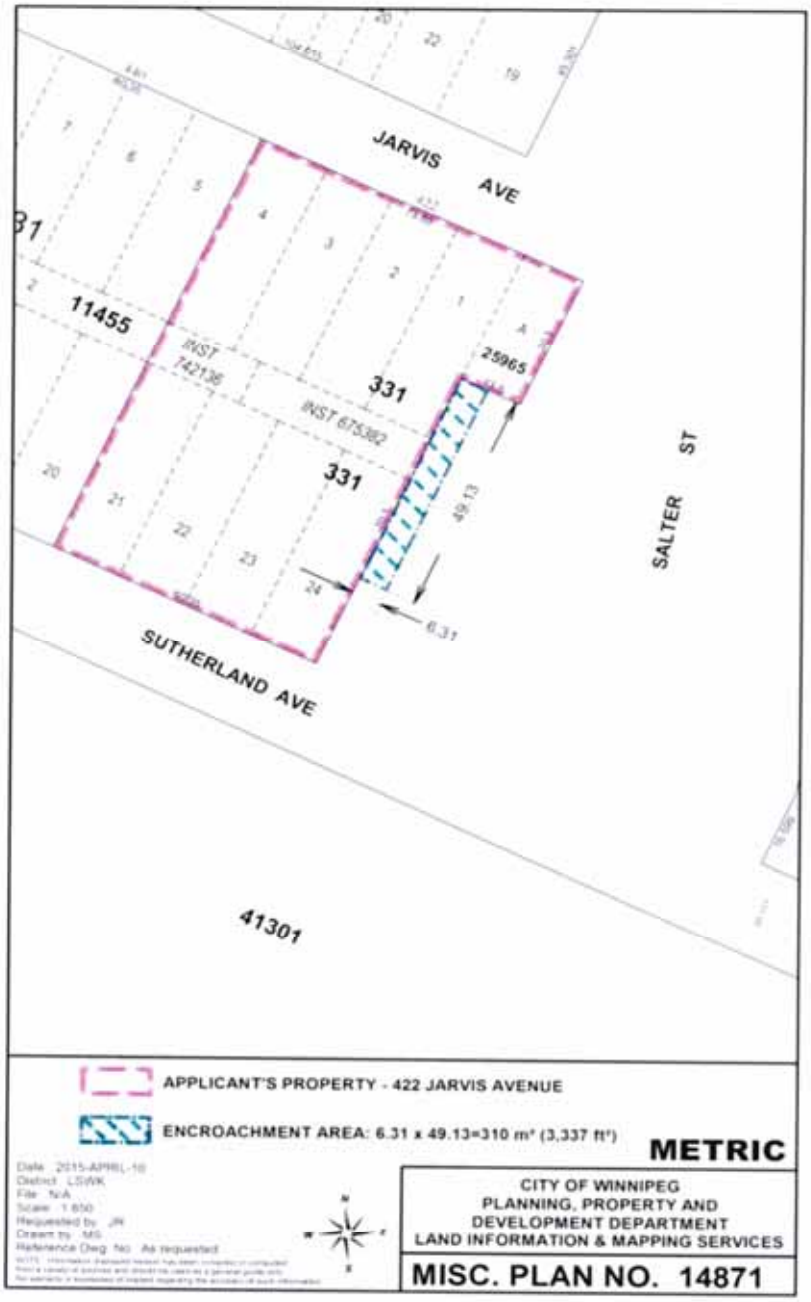
I, Jeff Petsch, duly authorized to act on behalf of 6779264 Manitoba Ltd., hereby agree that 6779264 Manitoba Ltd. will enter into an Encroachment Agreement with the City of Winnipeg for the use of City owned lands identified as "Encroachment Area" on Misc. Plan No. 14871, attached, in accordance with the terms and conditions as outlined herein on this Offer to Lease.

June 22, 2015

for 6779264 Manitoba Ltd. **Date**

Contact Person: Daytime: Jeff Dyck Phone: 204 794-8472
After Hours: Jeff Dyck Phone: 204 794-8472
E-mail Address: jdyck@bonify.com

V:\Julian Roberts\Current Easement Processing\422 Jarvis Ave


JARVIS AVE
11455
INST 742136
331
INST 675382
331
25965
SALTER ST
49.13
6.31
SUTHERLAND AVE
41301
APPLICANT'S PROPERTY - 422 JARVIS AVENUE
ENCROACHMENT AREA: 6.31 x 49.13=310 m² (3,337 ft²)
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14871