**Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – May 10, 2016**

**Item No. 6 Encroachment Agreement – Owen Street Right-of-Way Adjacent to Club Regent Casino (Transcona Ward)**

COUNCIL DECISION:

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

1. That the terms and conditions attached as Schedule "A" for an encroachment agreement in favour of Manitoba Liquor and Lotteries Corporation (hereinafter referred to as the "Licensee") for the purpose of developing and maintaining four free-standing signs identified as " Sign Encroachment Area" on Misc. Plan 14999 (hereinafter referred to as the "Lands") be approved.

2. That the City enters 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, Heritage and Downtown Development – May 10, 2016**

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

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

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 11, 2016, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 10, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown 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 to Allow for the Use of the Owen Street Right-of-Way Adjacent to Club Regent Casino for the Purpose of Developing and Maintaining Four Free-Standing Signs

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

## AUTHORIZATION

| Author | Department Head | CFO | CAO/COO |
|---|---|---|---|
| B. Erickson | J. Kiernan | M. Ruta | M. Jack<br>COO |

## RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule “A” for an encroachment agreement in favour of Manitoba Liquor and Lotteries Corporation (hereinafter referred to as the “Licensee”) for the purpose of developing and maintaining four free-standing signs identified as “ Sign Encroachment Area” on Misc. Plan 14999 (hereinafter referred to as the “Lands”) be approved.

2. That the City enters 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

The Encroachment By-law No. 692/74, clause 4(1)(d), states:

"Where the encroachment is of an unusual or commercial nature that it be referred to the Designated Officer of the City for the purpose of negotiating a reasonable rental and making recommendation to the Chief Administrative Officer for subsequent referral to Council."

Section 2 of The Encroachment By-law No. 692/74 provides:

""Designated Officer" means the Director of Planning, Property and Development or such other person as may be authorized in writing by the said Director to exercise some or all of the powers vested in him by this By-law".

In this regard, the Planning, Property & Development Department have negotiated Terms and Conditions of an Encroachment Agreement, in favour of Manitoba Liquor and Lotteries Corporation.

## EXECUTIVE SUMMARY

Application for an Encroachment Agreement for development and maintenance of four free-standing signs, as specified in the History section of this report.

## 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. 14999.

## HISTORY

An application was submitted to the City's Zoning and Permits Branch to develop and maintain four free-standing signs adjacent to the Owen Street 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 have negotiated proposed Terms and Conditions of an Encroachment Agreement in favour of Manitoba Liquor and Lotteries Corporation.

This report seeks approval of the Encroachment Agreement as negotiated.

## FINANCIAL IMPACT

## Financial Impact Statement

**Date:** April 11, 2016

**Project Name:**

**First Year of Program** **2016**

Proposed Encroachment Agreement to Allow for the Use of the Owen Street Right-of-Way Adjacent to Club Regent Casino for the Purpose of Developing and Maintaining 4 Free-Standing Signs

| | 2016 | 2017 | 2018 | 2019 | 2020 |
|---|---|---|---|---|---|
| **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 | 3,181 | 63 | 63 | 63 | 63 |
| Net Cost/(Benefit) | $ (3,181) | $ (63) | $ (63) | $ (63) | $ (63) |
| Less: Existing Budget Amounts | (3,181) | (63) | (63) | (63) | (63) |
| Net Budget Adjustment Required | $ - | $ - | $ - | $ - | $ - |

**Additional Comments:** Revenues in 2016 consist of $62.50 annual fee prorated for an assumed commencement date of July 1 + a one-time admin fee of $250 + a one-time legal admin fee of $2,900. Revenues from 2017 onward represent the annual fee amount only. No budget adjustment is required.

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

## CONSULTATION

**In preparing this report there was consultation with:**

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

## OURWINNIPEG POLICY ALIGNMENT

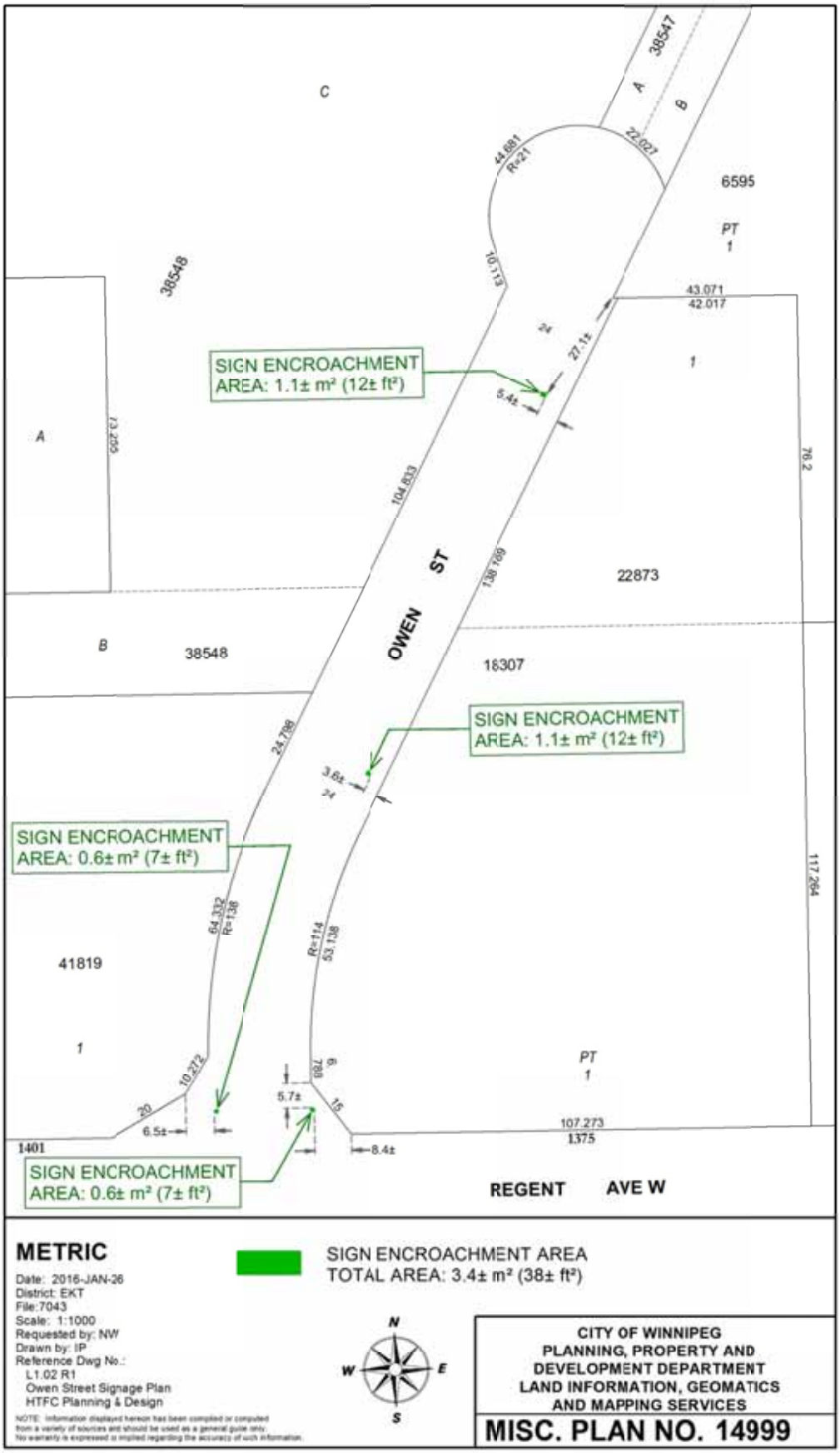
**OurWinnipeg Reference:**

- **Section 1-3 Direction 3- Maintain Strong Intergovernmental Cooperation**
- **Section 1-3 Direction 4- Collaborate with All Public, Private and Community Economic Development Agencies to Advance Economic Advantages.**
- **Section 1-3 Direction 8- Encourage Activities Beneficial to the Winnipeg Economy** >Enhance and showcase Winnipeg's unique public assets, amenities and attractions through high-quality design, maintenance and connectivity.

## SUBMITTED BY

| | |
|---|---|
| Department | Planning, Property and Development |
| Division | Municipal Accommodations |
| Prepared by: | Nolan Winters, Real Estate Officer |
| Date: | April 20, 2016 |
| File No.: | MA 2016-070 |

O:\Reports Directive\Municipal Accommdations\Leases\2016\ MA2016-070 - Encroachment Agreement to Allow Use of the Owen St Right-of-Way Adjacent to Club Regent Casino for Purpose of Developing & Maintaining 4 Free-Standing Signs


SIGN ENCROACHMENT AREA: 1.1± m² (12± ft²)
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SIGN ENCROACHMENT AREA: 0.6± m² (7± ft²)
SIGN ENCROACHMENT AREA: 0.6± m² (7± ft²)
OWEN ST
REGENT AVE W
38547
38548
6595
22873
16307
41819
1401
1375
METRIC
Date: 2016-JAN-26
District: EKT
File:7043
Scale: 1:1000
Requested by: NW
Drawn by: IP
Reference Dwg No.:
L1.02 R1
Owen Street Signage Plan
HTFC Planning & Design
SIGN ENCROACHMENT AREA
TOTAL AREA: 3.4± m² (38± ft²)
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION, GEOMATICS
AND MAPPING SERVICES
MISC. PLAN NO. 14999

## SCHEDULE A

**PROPOSED TERMS & CONDITIONS FOR AN ENCROACHMENT AGREEMENT FOR THE DEVELOPMENT AND MAINTENANCE OF FOUR FREE STANDING SIGNS ADJACENT TO 1425 REGENT AVENUE WEST- CLUB REGENT CASINO**

| | |
|---|---|
| Licensee: | Manitoba Liquor and Lotteries Corporation (hereinafter identified as the "Licensee"); |
| Area: | Shown and identified as "Sign Encroachment Area" on Misc. Plan 14999, attached (Hereinafter called the "Encroachment Area"); |
| Use: | 4 free standing signs (Hereinafter called the "Signs"); |
| Term: | Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council; |
| Fee: | $62.50 plus GST per annum, 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: | A one-time administration fee of $250.00 plus GST; |
| Legal Admin Fee: | A one-time Legal Services Administrative Fee in the amount of $2,900.00 payable prior to the commencement date; |
| Taxes: | Licensee 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: | Upon ninety (90) days written notice by either party; |
| 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;<br>The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage:<br>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;<br>All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba;<br>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 lease agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change;

Conditions:

The Licensee will not construct or permit the construction of any building or structure whatsoever on the Encroachment Area, nor make any excavation therein or improvement thereon, without the written authority of the City's Director of Planning, Property and Development;

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

The development and maintenance of the Encroachment Area will be performed at the sole cost, expense and effort of the Licensee, including, but not limited to, obtaining all permits required to develop, occupy and utilize the Encroachment Area for the intended use;

The Licensee will maintain at its own expense the Encroachment Area in a safe, clean and tidy condition to the satisfaction of the Director of the Planning, Property and Development Department;

In the event that the Encroachment Area requires repair, the Licensee shall perform at its sole cost, expense and effort required repairs within thirty (30) days of written notice provided by the City;

The Licensee will pay all operating costs including hydro costs related to the use and occupancy of the Encroachment Area;

The Licensee takes the Encroachment Area on an "as is" basis and acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, condition or suitability of the Encroachment Area for any use or purpose, nor as to any environmental conditions which may exist;

The 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 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 for any purpose whatsoever, including, but not limited to, those purposes related to viewing the state of repair, safety, protection, preservation or improvement of the Encroachment Area, and for doing any work to maintain, operate, repair, inspect or rehabilitate its existing water mains, sewer lines and appurtenances in or near to the Encroachment Area, without being responsible for any damage occasioned thereby;

The City reserves the right for MTS Communications Inc. and Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Encroachment Area for maintenance and/or repair of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby;

Manitoba Hydro and/or Centra Gas Manitoba Inc. have advised that approval can be given provided the following conditions are adhered to:

1) Locates are required to detect underground infrastructure. Please contact 204-480-1212 to make arrangements;

2) Provide 1 meter clearance from all underground infrastructure along with 1 meter clearance from all equipment above grade (ie. street lights);

3) Please note that a minimum horizontal separation of 1.0 meter and a minimum vertical separation of 300mm must be maintained between the proposed works and any underground electrical distribution;

4) Any excavation within 1 meter of Manitoba Hydro plant should be done according to Manitoba Hydro and Workplace Safety and Health standards and practices,

The Licensee is not to assign or sub-let or part with possession of all or any part of the Encroachment Area without the Licensee first obtaining the prior written consent of the City. In such event, the City in its sole discretion may cancel this agreement and enter into a new agreement. Further the Licensee acknowledges and agrees that upon making an application for such consent by the City, the Licensee shall pay to the City a non-refundable administrative fee of two hundred and fifty dollars ($250.00) plus GST, or such amount as may from time to time be determined by the City in its sole discretion and acting reasonably;

The Encroachment Agreement is subject to immediate cancellation by the City in the event of the Licensee being in default of any terms and conditions contained herein;

Upon termination or cancellation of the Encroachment Agreement the Licensee shall remove its property and improvements from the Encroachment Area and leave same in a condition satisfactory to the City. Should the Licensee default in so doing the City may remove the Licensee's property and improvements and restore the Encroachment Area at the sole risk and expense of the Licensee;

All terms and conditions contained herein, are subject to the approval of Council, or its delegated authority, and are not binding until such time as that approval is obtained;

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 and agreed to by the Licensee, acting reasonably;

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/Manager of Legal Services deems necessary and in a form satisfactory to the City Solicitor/Manager of Legal Services;

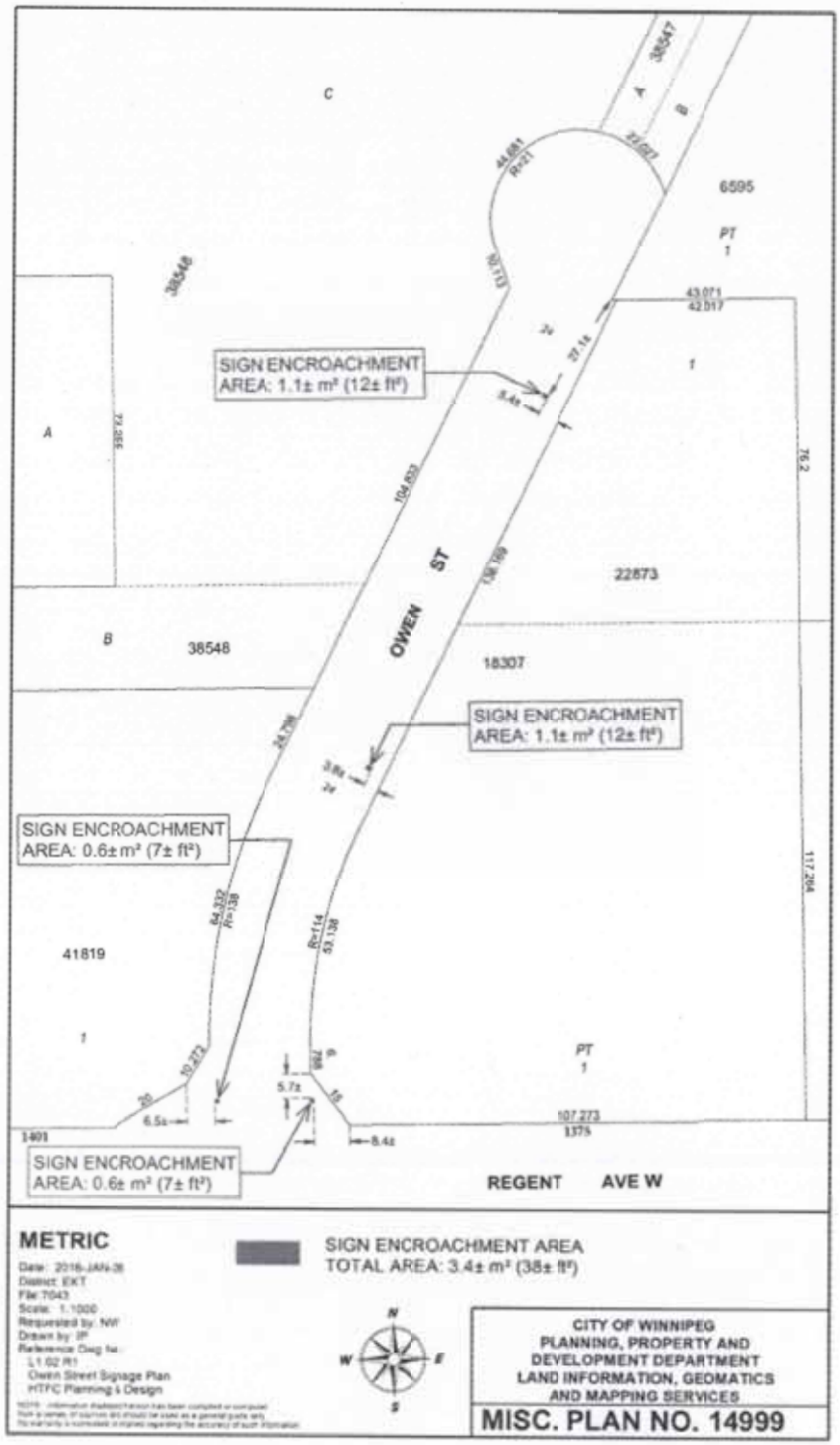
**Manitoba Liquor and Lotteries Corporation** hereby acknowledges and agrees to enter into an Encroachment Agreement with the City of Winnipeg for the use of the area identified as "Sign Encroachment Area" on Misc. Plan 14999 attached in accordance with the Terms and Conditions as outlined herein on this Schedule "A".

SIGNATURE

March 17, 2016
DATE

Gerry Sul
PRINT NAME

VP Facilities, Central Services, Security & Surveillance.
TITLE


SIGN ENCROACHMENT
AREA: 1.1± m² (12± ft²)
SIGN ENCROACHMENT
AREA: 1.1± m² (12± ft²)
SIGN ENCROACHMENT
AREA: 0.6± m² (7± ft²)
SIGN ENCROACHMENT
AREA: 0.6± m² (7± ft²)
OWEN ST
REGENT AVE W
6595
22873
18307
38548
41819
METRIC
SIGN ENCROACHMENT AREA
TOTAL AREA: 3.4± m² (38± ft²)
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION, GEOMATICS
AND MAPPING SERVICES
MISC. PLAN NO. 14999