Minute No. 468
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – July 5, 2016

Item No. 15 Lease Agreement and Encroachment Agreement – Osborne Village Business Improvement Zone

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 proposed terms and conditions attached hereto and referred to as Schedule "B" for an encroachment agreement in favour of the Osborne Village Business Improvement Zone, to install, construct, landscape, and maintain a streetscaping project and seating node for the area identified as "Encroachment Area" on Misc. Plan No. 13365/1 be approved.

2. That the City enter into an encroachment agreement as determined necessary by the Director of Legal Services and City Solicitor 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 and such other agreements as determined necessary by the Director of Legal Services and City Solicitor, in accordance with the terms and conditions set forth in Schedule "B"; and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor 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 – July 5, 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 July 6, 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 July 5, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendations 1 to 4 of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

STANDING COMMITTEE DECISION:

On July 5, 2016, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in recommendations 5 to 8 of the Winnipeg Public Service and approved the following:

5. That the proposed terms and conditions attached hereto and referred to as Schedule "A" for a lease agreement in favour of the Osborne Village Business Improvement Zone, to install, construct, landscape, and maintain a streetscaping project and seating node for the area identified as "Lease Area" on Misc. Plan No. 13365/1 be approved.

6. That the City enter into a lease agreement as determined necessary by the Director of Legal Services and City Solicitor to implement the intent of the foregoing.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – July 5, 2016

DECISION MAKING HISTORY:

STANDING COMMITTEE DECISION (continued):

7. That the authority be delegated to the Director of Planning, Property and Development to negotiate and approve the final terms and conditions of the lease agreement and such other agreements as determined necessary by the Director of Legal Services and City Solicitor, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the Director of Legal Services and City Solicitor to protect the interests of the City.

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

ADMINISTRATIVE REPORT

Title: Lease Agreement and Encroachment Agreement between the Osborne Village Business Improvement Zone and the City of Winnipeg

Issue: Installation, construction, maintenance and repair of a streetscaping project including customized neighbourhood lanterns and a seating node

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

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Erickson	J. Kiernan	M. Ruta	D. McNeil

RECOMMENDATIONS

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

1. That the proposed terms and conditions attached hereto and referred to as Schedule “B” for an encroachment agreement in favour of the Osborne Village Business Improvement Zone, to install, construct, landscape, and maintain a streetscaping project and seating node for the area identified as “Encroachment Area” on Misc. Plan No. 13365/1 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 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 “B”; 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.

That, subject to Council approval of Recommendations 1 - 4, the Standing Policy Committee on Property and Development, Heritage, and Downtown Development approve the following:

5. That the proposed terms and conditions attached hereto and referred to as Schedule "A" for a lease agreement in favour of the Osborne Village Business Improvement Zone, to install, construct, landscape, and maintain a streetscaping project and seating node for the area identified as "Lease Area" on Misc. Plan No. 13365/1 be approved.

6. That the City enter into a lease agreement as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

7. That the authority be delegated to the Director of Planning, Property and Development to negotiate and approve the final terms and conditions of the lease 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.

8. 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 a lease agreement and encroachment agreement as set out in attached Schedule "A" and Schedule "B" in favour of the Osborne Village Business Improvement Zone for the use of City-owned lands and adjacent right-of-way located near 145 Osborne Street and identified as "Lease Area" and "Encroachment Area" on attached Miscellaneous Plan No. 13365/1.

EXECUTIVE SUMMARY

Request for a Lease Agreement and Encroachment Agreement in favour of the Osborne Village Business Improvement Zone for use of City-owned land and adjacent right-of-way to install, construct, and maintain streetscaping elements including customized neighbourhood lanterns and a seating node.

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 a Lease Agreement and Encroachment Agreement as set out in the attached Proposed Terms and Conditions, Schedule “A” and Schedule “B”.

2. The streetscaping elements and improvements completed by the Osborne Village Business Improvement Zone will beautify and enhance the high traffic public area.

3. An annual continuing term with cancellation provision will easily allow for the Osborne Village Business Improvement Zone to install, construct, and landscape the streetscaping elements, while maintaining the lands. Should the City of Winnipeg require any of these lands or adjacent right-of-way for future purposes, the ninety (90) day cancellation provision will permit for this.

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

HISTORY/DISCUSSION

The main portion of the subject property has been operating as a parking lot, managed by the Winnipeg Parking Authority. This operation continues at present, and will remain unaffected by the proposed lease and encroachment agreements.

A small westerly portion of the subject property was licensed to Tap & Grill Inc. for the purpose of operating an outdoor patio / sidewalk café, as approved by Council on May 25, 1995. This outdoor patio is presently operating, and will remain unaffected by the proposed lease and encroachment agreements.

On April 14, 2008, a proposal to purchase the subject property was received by the adjacent property owner. On August 21, 2008, an appraisal was conducted of the subject property by the Planning, Property and Development Department. A concluded sale never materialized with this proponent.

A small easterly portion of the subject property encompasses current streetscaping elements, including decorative plant basins and vegetation. This area is intended to be modified and improved through the efforts of the Osborne Village Business Improvement Zone as per the proposed Lease Agreement and Encroachment agreement referenced herein.

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 a Lease Agreement and Encroachment Agreement in favour of the Osborne Village Business Improvement Zone.

This report seeks approval of the Lease Agreement and Encroachment Agreement as negotiated

FINANCIAL IMPACT

Financial Impact Statement

Date: May 12, 2016

Project Name: **First Year of Program** **2016**

Lease Agreement and Encroachment Agreement between the Osborne Village Business Improvement Zone and the City of Winnipeg

	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	1,814	135	138	140	143
Net Cost/(Benefit)	$ (1,814)	$ (135)	$ (138)	$ (140)	$ (143)
Less: Existing Budget Amounts	(1,814)	(135)	(138)	(140)	(143)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2016 consist of the $1/annum nominal lease amount, $131 in encroachment 'rent', two one-time administration fees of $250 and a one-time document preparation fee of $1,182 for the encroachment agreement. Revenues from 2017 onward consist of the $1 lease amount + the $131 in encroachment revenue. The latter is assumed to increase by an annual inflation factor of 2%.

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

CONSULTATION

In preparing this report there was consultation with:
Legal Services (as to legal issues)
Risk Management (as to insurance requirements)
Water and Waste Department
Public Works Department
Ward Councillor

OURWINNIPEG POLICY ALIGNMENT

03-1 Opportunity: (Direction #9): Collaborate With Developers, Community Organization, and Other Partners to Foster an Age-Friendly and Accessible Urban Environment

The proposed development and improvements demonstrate age-friendly advances to existing infrastructure which is situated on City-owned property and adjacent right-of-way.

03-2 Vitality: (Direction #6): Promote Cleanliness and Beautification

The proposed development and improvements to these City-owned facilities will include aesthetically pleasing features which add to the general cleanliness and appearance of the community.

SUBMITTED BY

Department:	Planning, Property and Development Department
Division:	Municipal Accommodations
Prepared by:	Julian Roberts
Date:	May 13, 2015
PPD. File No.:	MA2016-090

O:\Reports Directive\Municipal Accommodations\Leases\2016\MA2016-090 - Lease Agreement and Encroachment Agreement between the Osborne Village Business Improvement Zone and the City of Winnipeg.docx

Schedule "A"

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR A LEASE AGREEMENT TO CONSTRUCT, LANDSCAPE, AND MAINTAIN A STREETSCAPING PROJECT AND SEATING NODE, LOCATED AT 145 OSBORNE STREET

Landlord:	1. The City of Winnipeg (hereinafter called the "Landlord");
Tenant:	2. Osborne Village Business Improvement Zone (hereinafter called the Tenant);
Use:	3. Installation, construction, maintenance and repair of a streetscaping project including customized neighbourhood lanterns and a seating node;
Area:	4. Shown and identified as "Lease Area: ±54.2m² (±583ft²)" on Misc. Plan No. 13365/1, attached; (hereafter called the 'Lease Area');
Term:	5. Annual Continuing, commencing the first day of the month following approval from the City's Council or its delegated authority or such other date as mutually agreed upon;
Rent:	6. $1.00 per annum, plus GST, payable yearly in advance;
Admin Fee:	7. A one-time fee of $250.00 plus GST;
Document Preparation Fee:	8. A one-time Document Preparation Fee in the amount of $4,432.65 payable prior to the commencement date and only payable in the event that the Licensee does not meet the criteria set out in the Non-Monetary Grant Policy details attached as Schedule "B";
Non-Profit Lease:	9. The Tenant has provided eligibility information required to apply for a Non-Monetary Real Estate Grant to Non-Profit Organizations and hereby represents and warrants that the information is true and accurate to the best of the Tenant's knowledge. 10. The Landlord has reviewed the information and believes that it meets the Non-Monetary Grant criteria as per **Schedule B.**
Taxes:	11. The Tenant will pay such taxes, rates, including local improvements and charges assessed for the Lease Area in the same manner as if the Lease Area and any improvements thereon had been entered on the assessment roll of the City as privately owned and subject to taxation;

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12. The Tenant is entitled to make application to the City pursuant to the provisions of The Municipal Assessment Act of Manitoba and City of Winnipeg Community Groups Occupying City-Owned Facilities Bylaw No. 89/2005. If the application is granted and the resulting amendment to the Bylaw is approved, the Lease Area will be exempt from real property taxes and school taxes as of the date of such By-law approval. In the event that the Tenant loses its exemption, the Tenant shall, in accordance with the provisions of the above paragraph, pay all applicable real property tax and/or school tax.

Other Fees, Licenses, Taxes, Etc.:

13. All license fees, realty and business tax, etc. which may be charged in respect of the use and occupation of the Lease Area;

Insurance:

14. Tenant to indemnify and save harmless the Landlord from and against any and all claims for damages or injuries, including death, which may arise out of the use of the Lease Area by the Tenant;

15. The Tenant shall maintain Commercial General Liability insurance during the term of this agreement.

16. The Landlord shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this agreement and for any subsequent renewals thereof, provided that the City shall give the Tenant reasonable notice and shall request reasonable change.

17. The Tenant shall ensure that any Contractor or Sub-contractor hired to perform the construction, maintenance work or repairs to the Lease Area shall provide a certificate of insurance evidencing commercial general liability insurance in the amount of not less than $2,000,000 per occurrence covering bodily injury, property damage and personal injury. All liability policies must include the City of Winnipeg as an additional insured and include contractual liability, products and completed operations, cross liability clause and a provision for 30 days written notice of cancellation/termination;

18. Such certificate of insurance must be in a form satisfactory to the Supervisor of Insurance and must be provided at least two business days prior to the commencement of any work on the site;

19. Deductibles shall be borne by the Contractor and/or Sub-Contractor;

Development and

20. Unless otherwise specified herein, all improvements,

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Maintenance:	development and construction on the Lease Area are to be performed at the sole cost, expense and effort of the Tenant, including but not limited to obtaining all permits required to develop, occupy and utilize the Lease Area for its intended use. All improvements, development and construction must not interfere with any water and waste infrastructure, or any other utilities, and are subject to prior written approval by the City's Director of Planning, Property & Development (the "Director");
Tenant Responsibilities:	21. All maintenance and repair costs associated with the operation of the Lease Area shall be the sole responsibility of the Tenant;
Operating Costs:	22. Unless otherwise specified herein, the Tenant is to pay all operating costs, including but not limited to; the cost of any utilities, including but not limited to electricity, water and gas consumed on the Lease Area; the cost of cleaning, maintaining and servicing the Lease Area, any required garbage and waste collection and disposal;
Cancellation:	23. Ninety (90) days written notice by either party or immediately upon Tenant default;
Conditions:	24. The Tenant understands and agrees that the Lease Area is leased on an "as is" basis.
	25. The Tenant will comply with all laws, by-laws and regulations of any federal, provincial, municipal or other applicable authority;
	26. The Tenant acknowledges and agrees that the Landlord has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, conditions or suitability of the Lease Area for any use or purpose, nor as to any environmental conditions which may exist;
	27. The Landlord shall have the right of access to the Lease 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 Lease 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 Lease Area, without being responsible for any damage occasioned thereby.
	28. The Landlord reserves the right for MTS Communications Inc., Manitoba Hydro-Electric Board or other public utilities

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(hereinafter referred to as "Public Utilities") to enter upon the Lease Area at any time without notice to the Tenant for maintenance, repair, or installation of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby. 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 to contact the Call-Before-You Dig line at 204-480-1212;

29. The Tenant shall not assign this agreement or sublet the Lease Area without the prior written consent of the Landlord. And further the Tenant acknowledges and agrees that upon its making application for such consent by the Director, the Tenant shall pay to the Landlord a non-refundable administrative fee of Two Hundred and Fifty ($250.00), plus applicable Goods and Services Tax;

30. The Tenant shall be responsible for cleanup of litter in the immediate area as a result of use and occupation of the Lease Area and shall, at its own expense, maintain the Lease Area in a safe, clean and tidy condition to the satisfaction of the Director;

31. The Tenant shall release the Landlord from and against any and all claims for damages or injuries, including death that may arise from the use of the Lease Area by the Tenant. This provision shall survive any termination or expiration of this Agreement;

32. In the event of cancellation, termination or expiration of the agreement, the Tenant shall remove its property and leave the Lease Area in a condition satisfactory to the Landlord. Should the Tenant default in so doing, the Landlord may remove the Tenant's property and restore the Lease Area at the sole risk and expense of the Tenant;

33. That all applicable permits be obtained prior to any development;

34. The proposed terms and conditions of the proposed Lease Agreement are subject to the final approval of the City's Council or its delegated authority and to the City Solicitor/Director of Legal Services as to form and content;

35. The Tenant shall within six (6) months enter into a formal agreement with the Landlord embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the Director of Legal Services deems necessary and in a form satisfactory to the Director of Legal Services.

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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.

I, Stephanie Meilleur, AM DULY AUTHORIZED TO ACT ON BEHALF OF THE OSBORNE VILLAGE BUSINESS IMPROVEMENT ZONE, HEREBY AGREE TO ENTER INTO A LEASE AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS 'LEASE AREA' ON THE ATTACHED MISC. PLAN NO. 13365/1 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

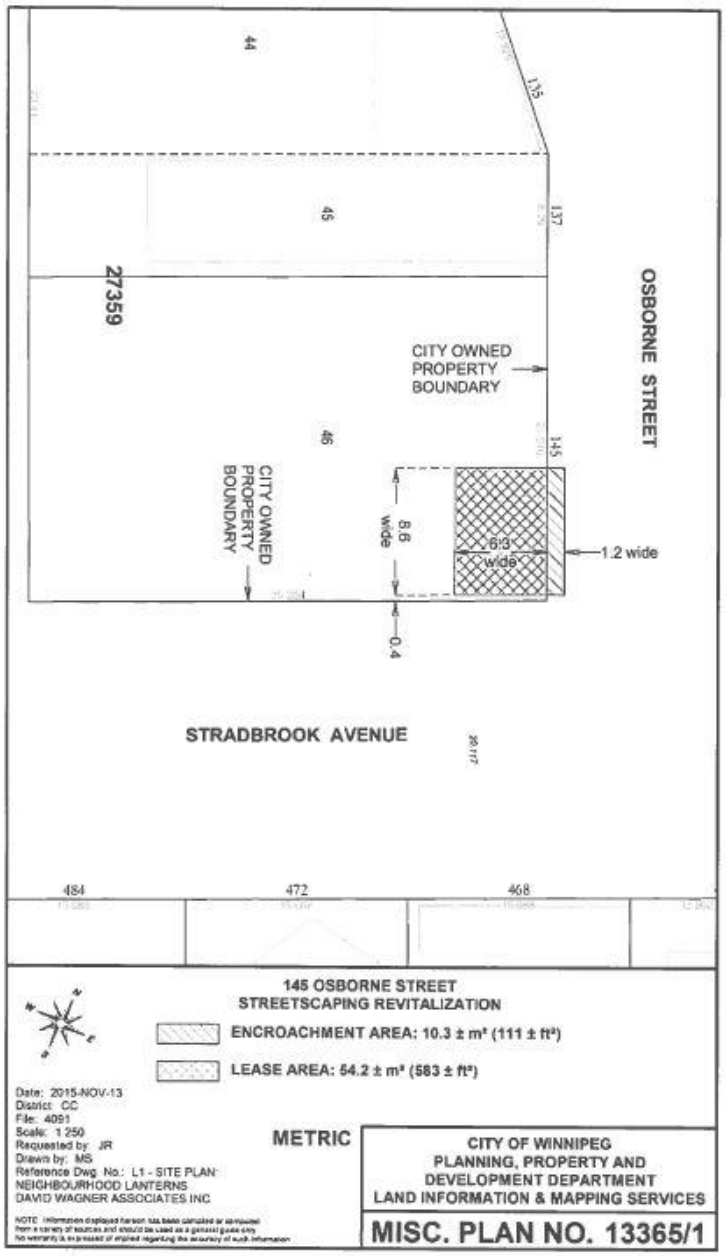
OSBORNE VILLAGE BUSINESS IMPROVEMENT ZONE:

Per: _____ April. 11 /2016
DATE

Stephanie Meilleur
NAME

Executive Director
TITLE

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SM


44
45
46
135
137
145
27359
OSBORNE STREET
CITY OWNED PROPERTY BOUNDARY
CITY OWNED PROPERTY BOUNDARY
8.6 wide
6.3 wide
1.2 wide
0.4
STRADBROOK AVENUE
484
472
468
145 OSBORNE STREET
STREETSCAPING REVITALIZATION
ENCROACHMENT AREA: 10.3 ± m² (111 ± ft²)
LEASE AREA: 54.2 ± m² (583 ± ft²)
Date: 2015-NOV-13
District: CC
File: 4091
Scale: 1:250
Requested by: JR
Drawn by: MS
Reference Dwg. No.: L1 - SITE PLAN
NEIGHBOURHOOD LANTERNS
DAVID WAGNER ASSOCIATES INC.
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13365/1

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Eligibility Criteria for Non-Monetary Real Estate Grants to Non-Profit Organizations

	Criteria	Meets Criteria	Does NOT Meet Criteria	Notes
1	The organization must provide a facility operated in its entirety by a non-profit organization for non-profit uses.	X		The Osborne Village BIZ operates as a non-profit organization. No profit is generated and no monies are paid to BIZ Zone Memberships. Audited Financial Statements are filed with City Clerks.
2	The organization must provide for activities which are compatible with the City's needs.	X		The objective of the The Osborne Village BIZ is to beautify, improve and maintain real property through different operations and streetscaping elements.
3	The organization must provide facilities for which there is a current and projected need in that location.	X		There is a need for this in all areas of the City.
4	The organization must provide reasonable access to all Winnipeg residents without discrimination.	X		The results and services provided by the Osborne Village BIZ are enjoyed any and all citizens of the City of Winnipeg without discrimination.
5	The organization must provide access without the charging of initiation fees, membership fees or other costs which are incompatible with like facilities or organizations.	X		There are no fees or charges for any events that the Osborne Village BIZ will host, or any streetscaping elements that are enjoyed by the public.
6	The organization must provide evidence of available funding and commitment to complete the project and assurance that no ongoing subsidies from the City will be required over the life of the development.	X		No ongoing subsidies are required by the Osborne Village BIZ Zone to complete or maintain their streetscpaing proposal.
General Remarks:				

Written by: Julian Roberts **Date:** April 11, 2016

Schedule "B"

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO INSTALL CONSTRUCT, LANDSCAPE, AND MAINTAIN A STREETSCAPING PROJECT AND SEATING NODE, LOCATED AT 145 OSBORNE STREET AND ENCROACHING ONTO THE ADJACENT RIGHT OF WAY

Licensee:	1. Osborne Village Business Improvement Zone (hereinafter called the "Licensee");
Use:	2. Installation, construction, maintenance and repair of a streetscaping project including customized neighbourhood lanterns and a seating node;
Area:	3. Shown and identified as "Encroachment Area: ±10.3m² (±111ft²)" on Misc. Plan No. 13365/1, attached; (hereafter called the 'Lands');
Term:	4. Annual Continuing, commencing the first day of the month following approval from the City's Standing Committees and Council; or such other date as mutually agreed upon;
Rental:	5. $131.25 per annum, plus GST, payable yearly in advance, 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;
Admin Fee:	6. A one-time fee of $250.00 plus GST;
Document Preparation Fee:	7. A one-time Document Preparation Fee in the amount of $1,182.04 for a simple encroachment agreement payable prior to the commencement date;
Non-Profit Lease:	8. The Licensee has provided eligibility information required to apply for a Non-Monetary Real Estate Grant to Non-Profit Organizations and hereby represents and warrants that the information is true and accurate to the best of the Licensee's knowledge. 9. The City of Winnipeg has reviewed the information and believes that it meets the Non-Monetary Grant criteria as per **Schedule B.**
Taxes:	10. The Licensee will pay such taxes, rates, including local improvements and charges assessed for the Lands in the same

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manner as if the Lands and any improvements thereon had been entered on the assessment roll of the City as privately owned and subject to taxation;

11. The Licensee is entitled to make application to the City pursuant to the provisions of The Municipal Assessment Act of Manitoba and City of Winnipeg Community Groups Occupying City-Owned Facilities Bylaw No. 89/2005. If the application is granted and the resulting amendment to the Bylaw is approved, the Lands will be exempt from real property taxes and school taxes as of the date of such By-law approval. In the event that the Licensee loses its exemption, the Licensee shall, in accordance with the provisions of the above paragraph, pay all applicable real property tax and/or school tax.

Other Fees, Licenses, Taxes, Etc.:

12. All license fees, realty and business tax, etc. which may be charged in respect of the use and occupation of the Lands;

Insurance:

13. Licensee to indemnify and save harmless the City from and against any and all claims for damages or injuries, including death, which may arise out of the use of the Lands by the Licensee;

14. The Licensee shall maintain commercial general liability insurances during the term of this agreement.

15. 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 agreement and for any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change.

16. The Licensee shall ensure that any Contractor or Sub-contractor hired to perform the construction, maintenance work or repairs to the Lands shall provide a certificate of insurance evidencing commercial general liability insurance in the amount of not less than $2,000,000 per occurrence covering bodily injury, property damage and personal injury. All liability policies must include the City of Winnipeg as an additional insured and include contractual liability, products and completed operations, cross liability clause and a provision for 30 days written notice of cancellation/termination;

17. Such certificate of insurance must be in a form satisfactory to the Supervisor of Insurance and must be provided at least two business days prior to the commencement of any work on the site;

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18. Deductibles shall be borne by the Contractor and/or Sub-Contractor;

Development and Maintenance:

19. Unless otherwise specified herein, all improvements, development and construction on the Lands are to 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 Lands for its intended use. All improvements, development and construction must not interfere with any water and waste infrastructure, or any other utilities, and are subject to prior written approval by the City's Director of Planning, Property and Development (the "Director");

Licensee Responsibilities:

20. All maintenance and repair costs associated with the operation of the Lands shall be the sole responsibility of the Licensee;

Operating Costs:

21. Unless otherwise specified herein, the Licensee is to pay all operating costs, including but not limited to identification; the cost of any utilities, including but not limited to electricity, water and gas consumed on the Lands; the cost of cleaning, maintaining and servicing the Lands, and any required garbage and waste collection and disposal;

Cancellation:

22. Ninety (90) days written notice by either party or immediately upon Licensee default;

Conditions:

23. The Licensee acknowledges and agrees that the portion of the lands that are identified as "ENCROACHMENT AREA: $\pm 10.3m^2$ ($111ft^2$)" is located within a right-of-way and is governed by The City of Winnipeg By-law No. 692/74;

24. The Licensee understands and agrees that the Lands are licensed on an "as is" basis.

25. The Licensee will comply with all laws, by-laws and regulations of any federal, provincial, municipal or other applicable authority;

26. The Licensee acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, conditions or suitability of the Lands for any use or purpose, nor as to any environmental conditions which may exist;

27. The City shall have the right of access to the Lands 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

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limited to, those purposes related to viewing the state of repair, safety, protection, preservation or improvement of the Lands, 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 Lands, without being responsible for any damage occasioned thereby.

28. The City reserves the right for MTS Communications Inc., Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Lands at any time without notice to the Licensee for maintenance, repair, or installation of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby. Any removal or relocation of existing facilities as a result of the proposed applicant will be at the expense of the Licensee. Prior to any digging or excavation, Manitoba Hydro and/or Centra Gas Manitoba Inc. advise the Licensee contact the Call-Before-You Dig line at 204-480-1212;

29. The Licensee shall not assign this agreement or sublet the Lands without the prior written consent of the City. And further the Licensee acknowledges and agrees that upon its making application for such consent by the Director, the Licensee shall pay to the City a non-refundable administrative fee of Two Hundred and Fifty ($250.00), plus applicable Goods and Services Tax;

30. The Licensee shall be responsible for cleanup of litter in the immediate area as a result of use and occupation of the Lands and shall, at its own expense, maintain the Lands in a safe, clean and tidy condition to the satisfaction of the Director;

31. The Licensee shall release the City from and against any and all claims for damages or injuries, including death that may arise from the use of the Lands by the Licensee. This provision shall survive any termination or expiration of this Agreement;

32. In the event of cancellation, termination or expiration of the agreement, the Licensee shall remove its property and leave the Lands in a condition satisfactory to the Director. Should the Licensee default in so doing, the City may remove the Licensee's property and restore the Lands at the sole risk and expense of the Licensee;

33. That all applicable permits be obtained prior to any development;

34. The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the

Initial

City's Council or its delegated authority and to the City Solicitor/Director of Legal Services as to form and content;

35. The Licensee shall within six (6) months enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the Director of Legal Services deems necessary and in a form satisfactory to the Director of Legal Services.

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.

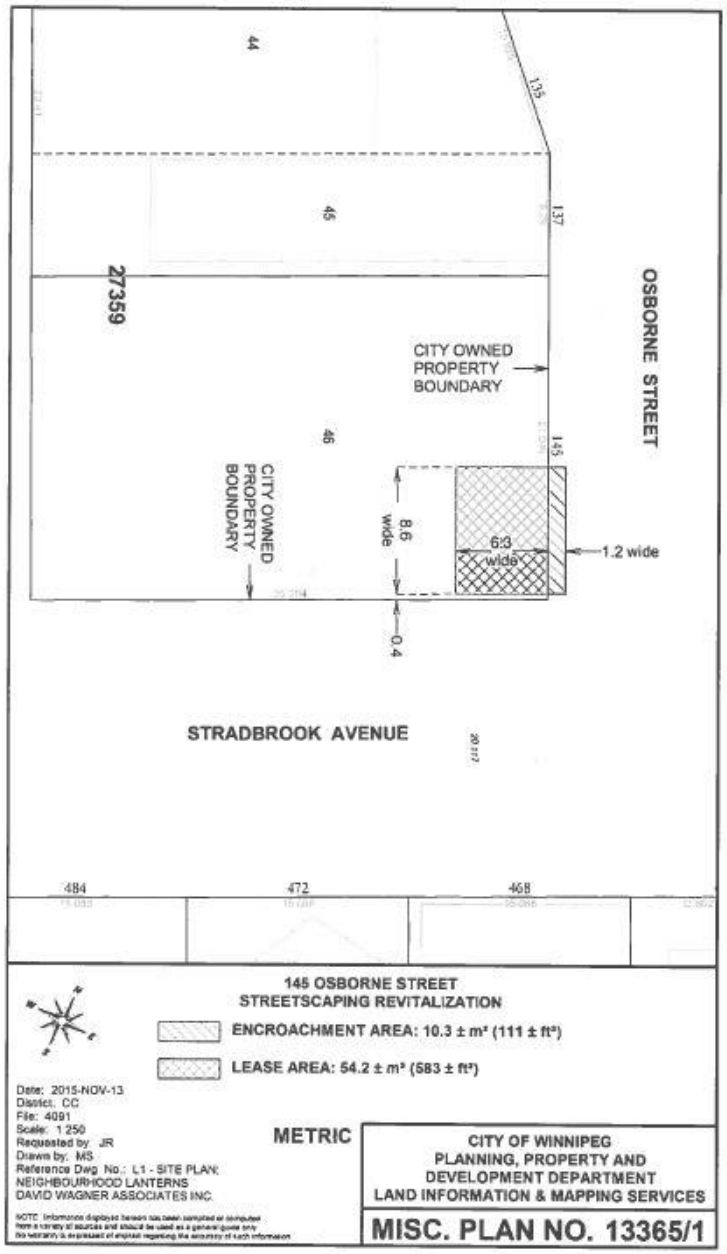
I, Stephanie Meilleur, AM DULY AUTHORIZED TO ACT ON BEHALF OF THE OSBORNE VILLAGE BUSINESS IMPROVEMENT ZONE, HEREBY AGREE TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS 'ENCROACHMENT AREA' ON THE ATTACHED MISC. PLAN NO. 13365/1 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

OSBORNE VILLAGE BUSINESS IMPROVEMENT ZONE:

Per: _____ April. 11/2016
DATE

Stephanie Meilleur - Executive Director
NAME / TITLE

Initial


44
135
45
137
27359
OSBORNE STREET
CITY OWNED
PROPERTY
BOUNDARY
46
145
CITY OWNED
PROPERTY
BOUNDARY
8.6
wide
6.3
wide
1.2 wide
0.4
STRADBROOK AVENUE
484
472
468
145 OSBORNE STREET
STREETSCAPING REVITALIZATION
ENCROACHMENT AREA: 10.3 ± m² (111 ± ft²)
LEASE AREA: 54.2 ± m² (583 ± ft²)
Date: 2015-NOV-13
District: CC
File: 4091
Scale: 1:250
Requested by: JR
Drawn by: MS
Reference Dwg No.: L1 - SITE PLAN
NEIGHBOURHOOD LANTERNS
DAVID WAGNER ASSOCIATES INC.
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13365/1

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Eligibility Criteria for Non-Monetary Real Estate Grants to Non-Profit Organizations

	Criteria	Meets Criteria	Does NOT Meet Criteria	Notes
1	The organization must provide a facility operated in its entirety by a non-profit organization for non-profit uses.	X		The Osborne Village BIZ operates as a non-profit organization. No profit is generated and no monies are paid to BIZ Zone Memberships. Audited Financial Statements are filed with City Clerks.
2	The organization must provide for activities which are compatible with the City's needs.	X		The objective of the The Osborne Village BIZ is to beautify, improve and maintain real property through different operations and streetscaping elements.
3	The organization must provide facilities for which there is a current and projected need in that location.	X		There is a need for this in all areas of the City.
4	The organization must provide reasonable access to all Winnipeg residents without discrimination.	X		The results and services provided by the Osborne Village BIZ are enjoyed any and all citizens of the City of Winnipeg without discrimination.
5	The organization must provide access without the charging of initiation fees, membership fees or other costs which are incompatible with like facilities or organizations.	X		There are no fees or charges for any events that the Osborne Village BIZ will host, or any streetscaping elements that are enjoyed by the public.
6	The organization must provide evidence of available funding and commitment to complete the project and assurance that no ongoing subsidies from the City will be required over the life of the development.	X		No ongoing subsidies are required by the Osborne Village BIZ Zone to complete or maintain their streetscpaing proposal.
General Remarks:				

Written by: Julian Roberts **Date:** April 11, 2016