Minute No. 398
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – May 9, 2017

Item No. 10 Encroachment Agreement to Allow the Use of Right-of-Way North-East of the Intersection of Academy Road and Kenaston Boulevard for the Purpose of a Temporary Rapid Assembly Telecommunication Tower System

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 as Schedule "A" for an encroachment agreement in favour of MTS Inc. (hereinafter referred to as the "Licensee") for the purpose of developing and maintaining a temporary rapid assembly telecommunication tower system that encroaches onto a City right-of-way as identified as "Encroachment Area" on Misc. Plan 15138 be approved (hereinafter referred to as the "Lands").

2. That the City enter into, execute and deliver an encroachment agreement with MTS Inc. and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

3. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the final terms and conditions of the encroachment agreement and such other Ancillary Agreements, in accordance with this report 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.

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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 17, 2017, 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 9, 2017, 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 the Use of Right-of-Way North-East of the Intersection of Academy Road and Kenaston Boulevard for the Purpose of a Temporary Rapid Assembly Telecommunication Tower System

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

EXECUTIVE SUMMARY

In an effort to address the poor quality of telecommunications signals in the area, MTS Inc. plans to deploy a temporary rapid assembly telecommunications tower on City land located near the intersection of Kenaston Boulevard and Academy Road. MTS Inc. has applied for an encroachment agreement with the City, and the Public Service has negotiated proposed terms and conditions (attached as Schedule A). This is anticipated to be a temporary solution until a more permanent one can be found.

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule “A” for an encroachment agreement in favour of MTS Inc. (hereinafter referred to as the “Licensee”) for the purpose of developing and maintaining a temporary rapid assembly telecommunication tower system that encroaches onto a City right-of-way as identified as “Encroachment Area” on Misc. Plan 15138 be approved (hereinafter referred to as the “Lands”).

2. That the City enter into, execute and deliver an encroachment agreement with MTS Inc. and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the “Ancillary Agreements”).

3. That the authority be delegated to the Chief Administrative Officer to negotiate and approve the final terms and conditions of the encroachment agreement and such other Ancillary Agreements, in accordance with this report 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 Public Service has negotiated Terms and Conditions of an Encroachment Agreement, in favour of MTS Inc.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to entering into an encroachment agreement for use of the City's right-of-way as shown on the attached Misc. Plan No. 15138.

HISTORY/DISCUSSION

An application was submitted to the City's Zoning and Permits Branch to develop and maintain a temporary rapid assembly telecommunications tower encroaching onto a City right-of-way at the corner of Kenaston Boulevard and Academy Road.

Through its proposed use of the rapid assembly telecommunications tower, the Licensee is trying to temporarily address the poor quality of telecommunications signals in the area until a more permanent solution can be arrived at.

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 MTS Inc.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: April 3, 2017

Project Name:

First Year of Program **2017**

Proposed Encroachment Agreement to Allow the Use of Right-of-Way North-East of the Intersection of Academy Road and Kenaston Boulevard for the Purpose of a Temporary

	2017	2018	2019	2020	2021 & 2022
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	16,099	22,875	22,875	22,875	30,827
Net Cost/(Benefit)	$ (16,099)	$ (22,875)	$ (22,875)	$ (22,875)	$ (30,827)
Less: Existing Budget Amounts	(16,099)	(22,875)	(22,875)	(22,875)	(30,827)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2017 consist of the annual rental amount pro-rated for an assumed commencement date of May 10, the annual admin fee of $375 and the document preparation fee of $1,176. Amounts from 2018 on consist of the annual rental amount + the admin fee.

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

CONSULTATION

This Report has been prepared in consultation with:

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

OURWINNIPEG POLICY ALIGNMENT

OurWinnipeg Reference:

- **Section 01-01a- Develop and Maintain an Urban Structure Planning Tool**
- **Section 1-3- Direction 4: Collaborate With All Public, Private and Community Economic Development Agencies to Advance Economic Advantages**
- **Section 03-01- Direction 2: Provide Equitable Access to Municipal Programs, Services and Facilities**

SUBMITTED BY

Department	Planning, Property and Development
Division	Municipal Accommodations
Prepared by:	Nolan Winters, Prop
Date:	April 10, 2017
File No.:	5605/A

Attachments: Schedule A (with Misc. Plan No. 15138)

O:\Reports Directive\Municipal Accommodations\Leases\2017\MA2017-054 - Encroachment Agreement to Allow Use of Right-of-Way NE of Intersection of Academy Rd & Kenaston Blvd for Purpose of Temporary Rapid Assembly Telecommunication Tower System.docx

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR THE USE OF A PORTION OF CITY RIGHT-OF-WAY ADJACENT TO ACADEMY ROAD ON THE ACADEMY ROAD BOULEVARD

Use:	Installation, development, maintenance and repair of a temporary rapid assembly tower system;
Licensee:	MTS Inc. (hereinafter called the "Licensee");
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 15138, attached (hereinafter referred to as the "Lands");
Term:	One Five year term, beginning on the first day of the month following approval from the City's Standing Committees and Council or such other date as mutually agreed upon and approved by the City's Director of Planning, Property and Development (hereinafter called the "Director");
Rental:	$22,500.00 per annum, plus GST, computed on the basis of the fees outlined in the City of Winnipeg *Encroachment By-Law No. 692/74* and amendments thereto, in event that the By-law is amended changing the fees charged for encroachments the rental paid under this agreement shall be adjusted accordingly;
Administrative Fee:	Annual administrative fee of $375.00 plus GST;
Document Preparation Fee:	A one-time Legal Services Document Preparation Fee in the amount of $1,176.00 plus GST payable prior to the commencement date;
Realty Taxes:	The Licensee is responsible for all realty taxes, municipal taxes, school taxes, local improvements, license fees, business tax, etc. of which may be charged in respect of the use and occupation of the Lands.
Other Fees, Licenses, Taxes etc:	All other license fees, business tax, levies, etc. which may be charged in respect of the use and occupation of the Lands.

Insurance:	The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage: Commercial general liability insurance in the amount of at least two million dollars ($2,000,000) per occurrence with a minimum five million dollars ($5,000,000) aggregate for bodily injury and property damage., Such liability policy to include the City of Winnipeg as an additional insured and contain evidence of contractual liability and cross liability clause; A broad form property insurance policy for the full replacement cost of the rapid assembly tower system located within the area identified. Such policy shall contain a waiver of subrogation right which the Licensee's insurers may have against the City and against those for whom the City is, in law, responsible. All policies to 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, 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 to the City's Supervisor of Insurance; 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;
Cancellation:	Ninety (90) days' written notice by either party; Should the Licensee be in default of any of the terms and conditions of the Agreement, the City shall provide the Licensee with fifteen (15) days written notice to remedy the default along with a description

of the nature of the default. Should the Licensee not remedy the default to the satisfaction of the City, the City, at its sole discretion, may terminate this Agreement immediately upon the expiration of the fifteen (15) days' notice period;

Conditions:

That the approval of this application by the Designated Officer – Encroachments is only valid for a period of six (6) months from the date of said approval unless the Licensee enters into an Encroachment Agreement with the City of Winnipeg within the stated time frame, or alternatively obtain an extension of time from the Designated Officer – Encroachments;

The Licensee acknowledges and agrees that the portion of the lands that are identified as "Encroachment Area" on Misc. Plan No. 15138 is located within a right-of-way and is governed by The City of Winnipeg By-law No. 692/74;

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

The City shall have the right to access the Lands 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 for any purpose whatsoever, including to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the Lands without being responsible for any damage occasioned thereby.

The City reserves the right for Manitoba Hydro-Electric Board, Centra Gas Manitoba Inc. or other public utilities (hereinafter referred to as the "Public Utilities") to enter upon the Lands at any time without notice to the Licensee for maintenance, repair or installation of their utilities w ithout the City and/or Public Utilities being responsible for any damage occasioned thereby. Any removal or relocation of existing facilities as a result of the proposed license will be at the expense of the Licensee.

Manitoba Hydro and/or Centra Gas Manitoba Inc. advise of the following:

(a) Centra Gas Manitoba Inc. and Manitoba Hydro have no facilities in the affected area and there are no easement requirements.

(b) Any removal or relocation of Manitoba Hydro and/or Centra Gas Manitoba Inc. existing facilities as a result of the proposed license will be at the expense of the Licensee;

(c) Future electrical and/or gas service can be obtained from the local Manitoba Hydro District Office;

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

(e) Prior to any digging or excavation, the Licensee must contact the Call Before You Dig line at 204-480-1212;

There is a City-owned 300 mm combined sewer entering the southeast corner of the Lands and ending up in a plug, as well as two catch basins and their leads located on the Lands. The Licensee acknowledges and agrees that the catch basins must not be covered up or damaged as a result of the proposed work and that the tower structure must not be placed over the top of the above-mentioned sewer infrastructure.

The Licensee acknowledges and agrees that, if any work or maintenance needs to be performed on the City-owned infrastructure, and the proposed pathway (or any other proposed structures) is in any way impeding this work or maintenance, such proposed pathway (or structures) may need to be removed and any removal/restoration of such pathway (or structures) would be at the sole expense of the Licensee.

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Lands 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 Lands.

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 administration fee of two hundred and fifty dollars ($250.00), plus applicable GST.

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

That if any removal, relocation or adjustment of existing MTS facilities is required, it will be at the expense of 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;

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

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 are subject to prior written approval of the Director;

The Licensee will not erect or permit the erection of any building or structure whatsoever on the Lands,

nor make any excavation therein or improvement thereon, without the prior written approval of the Director;

The Licensee shall maintain at its own expense the Lands in good repair in accordance with industry standards and in a safe, clean and tidy condition to the satisfaction of the City;

In the event that the Lands require repair and the Licensee receives a written notice from the City, the Licensee shall forthwith perform the repairs at its sole cost, expense and effort. If the Licensee does not so repair, the City may enter upon the Lands and conduct the repairs at the sole cost and expense of the Licensee;

The Licensee shall not suffer or permit any claim, lien or charge under *The Builders' Liens Act*, C.C.S.M. c. B91, or any like statute to be made, filed or registered against the City or against the Lands or any fixtures or improvements thereto by reason of work, labour, services or materials supplied or claimed to have been supplied to the Licensee.

The Tenant shall not release into the environment, or deposit, discharge, place or dispose of, at, on or near the Lands and/or adjoining City land, any dangerous goods as that term is defined in *The Dangerous Goods Handling and Transportation Act*, C.C.S.M. c. D12, as amended, replaced or substituted from time to time

In the event of termination, cancellation or expiration of the Agreement the Licensee shall remove its property from the Lands 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 restore the Lands at the sole risk and expense of the Licensee;

Notwithstanding the forfeiture or termination of this Agreement in any manner herein provided for, the Licensee shall be and remain liable to the City for all payments due and obligations and liabilities to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeitures or termination and for the fulfillment of all

obligations on the part of the Licensee to be observed and performed upon after the said termination;

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

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;

That snow removal on the Lands shall be the responsibility of the Licensee;

The Licensee shall comply with the City of Winnipeg's "Winnipeg Antenna Systems Policy" (dated May 27th, 2015) and the policies of Innovation, Science and Economic Development Canada, including, but not limited to:

(a) Ensuring that the design of the tower system conforms to the requirements of the above-mentioned policies;

(b) Sending a notice to landowners situated within an area three times the height of the tower (unless the City's Planning and Land Use Division determines that the area of notification shall be increased). This notice shall include all information as required by the above-mentioned policies; and

(c) Obtaining a letter of concurrence from the City's Planning and Land Use Division.

The Licensee shall 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.

The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the City's Standing Committees and

Council, or its delegated authority, and are not binding until such time as that approval is obtained.

MTS INC. HEREBY AGREES 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. 15138 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

MTS INC.

Per: _____ March 22, 2017

DATE

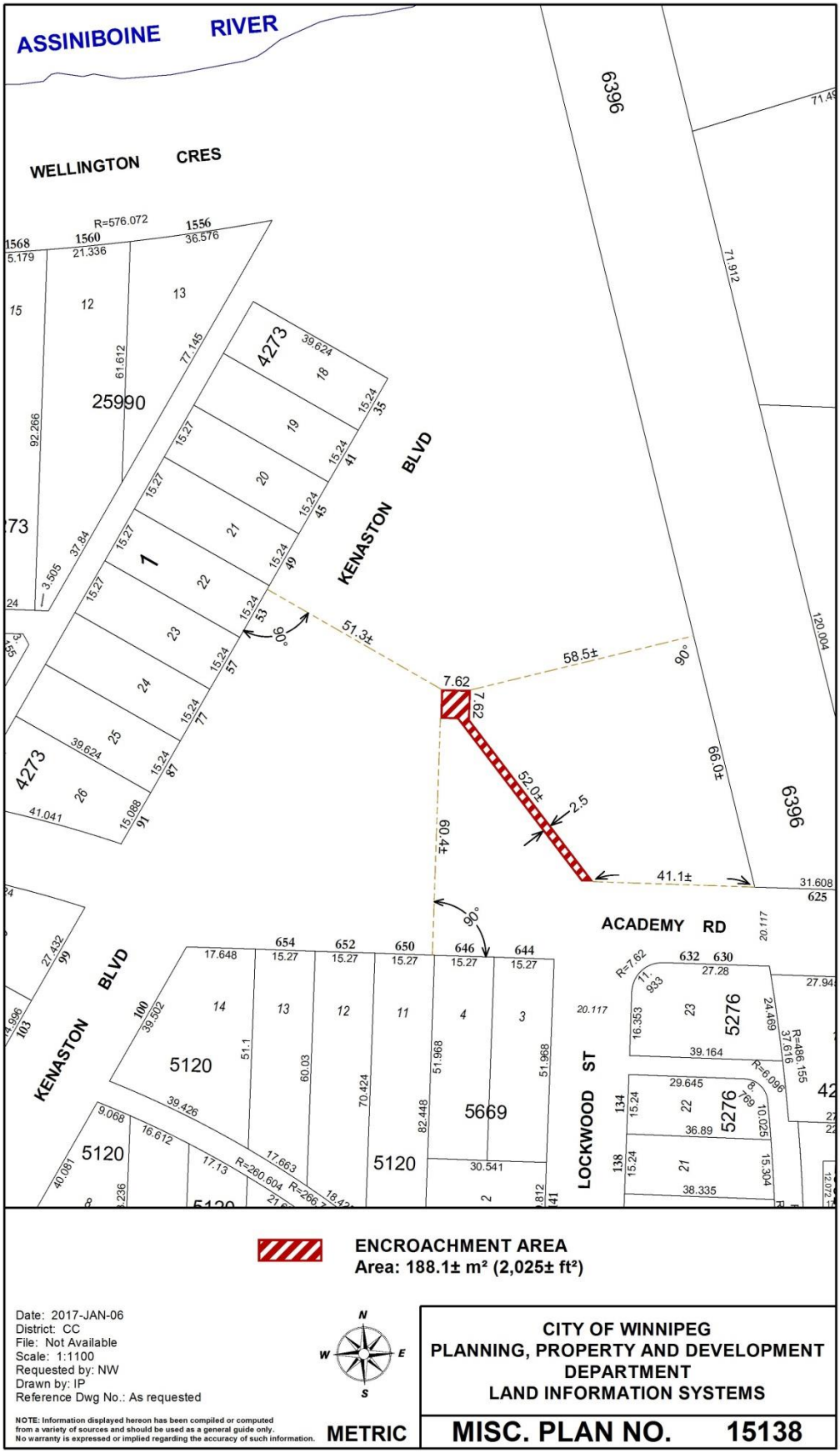
Pat Solman

NAME

Senior VP Network & Field Services

TITLE

I/We have been authorized to bind the Corporation


ASSINIBOINE RIVER
WELLINGTON CRES
KENASTON BLVD
ACADEMY RD
LOCKWOOD ST
6396
25990
4273
5120
5669
5276
7.62
51.3±
58.5±
52.0±
2.5
60.4±
41.1±
66.0±
90°
ENCROACHMENT AREA
Area: 188.1± m² (2,025± ft²)
Date: 2017-JAN-06
District: CC
File: Not Available
Scale: 1:1100
Requested by: NW
Drawn by: IP
Reference Dwg No.: As requested
NOTE: Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SYSTEMS
MISC. PLAN NO. 15138