**Minute No. 434**
**Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 6, 2017**

**Item No. 7** **Assignment of Development Agreement AG 44/79 – Whyte Ridge Industrial Development Agreement AG 44/79 – DAS 30/88 – Fultz Boulevard**
**(River Heights-Fort Garry 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 City consent to the assignment of Development Agreement AG 44/79 from 2113686 Manitoba Ltd. (formerly Sun-X Properties Ltd.) subject to the new Developer entering into an amendment to AG 44/79, posting suitable Agreement securities and completing outstanding servicing requirements as determined by and to the satisfaction of Council.

2. 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 – June 6, 2017**

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 June 14, 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 June 6, 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:** ASSIGNMENT OF DEVELOPMENT AGREEMENT AG 44/79 – WHYTE RIDGE INDUSTRIAL DEVELOPMENT AGREEMENT AG 44/79 (DAS 30/88 – FULTZ BOULEVARD)

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

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| M. Pittet | J. Kiernan | n/a | D. McNeil |

## EXECUTIVE SUMMARY

2113686 Manitoba Ltd. (formerly Sun-X Properties Ltd.) and 7314290 Manitoba Ltd., have requested the City's consent to the assignment by 2113686 Manitoba Ltd. of all its rights, entitlements, interests and obligations as Developer under Development Agreement AG 44/79, as amended, to 7314290 Manitoba Ltd.

The Winnipeg Public Service has no objection to this request subject to the new proponent providing suitable Agreement securities and completing outstanding Agreement works as determined by, and to the satisfaction of, Council.

## RECOMMENDATIONS

1. That the City consent to the assignment of Development Agreement AG 44/79 from 2113686 Manitoba Ltd. (formerly Sun-X Properties Ltd.) subject to the new Developer entering into an amendment to AG 44/79, posting suitable Agreement securities and completing outstanding servicing requirements as determined by and to the satisfaction of Council.

2. 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 assignment of a Development Agreement requires Council approval.

## IMPLICATIONS OF THE RECOMMENDATIONS

Concurrence with this recommendation will enable 7314290 Manitoba Ltd. to complete the development of lands pursuant to terms and conditions of Development Agreement AG 44/79 including undertaking, as applicable, an amending Agreement for the deletion of certain servicing requirements for a closed section of Fultz Boulevard and the completion of a permanent cul-de-sac construction for access to undeveloped lands at the south end of Fultz Boulevard.

## HISTORY/DISCUSSION

*History: Overview*

The City entered into Development Agreement AG 44/79 dated April 16, 1980 with Whyte Ridge Industrial Developments Ltd. (Whyte Ridge) respecting lands generally located west of Waverley Street, south of Chevrier Boulevard, east of Kenaston Boulevard and north of Bishop Grandin Boulevard. The Agreement AG 44/79 was amended several times between 1980 and 2001.

On April 18, 1990, Whyte Ridge and the City entered into an amendment to AG 44/79 for the re-subdivision of portions of the lands ("AG 30/88" – pursuant to development application no. DAS 30/88) and opened Fultz Boulevard. Staged construction of Fultz Boulevard was permitted and required firstly (Stage I) that the north-south roadway be constructed with a paved turnaround at the south end. A paved turn-around has not been completed to date. The east-west roadway improvements and a second access were required under future (Stage II) development prior to building permits for development of Lot 2, Block 1, Plan 26133.

On March 26, 1998, the City consented to Whyte Ridge assigning AG 44/79 and all of Whyte Ridge's rights, entitlements, interests and obligations as the Developer under AG 44/79 to Sun-X Properties Ltd. (Sun-X). The City has been advised that in 2007, Sun-X changed its company name to 2113686 Manitoba Ltd. (2113686).

On June 20, 2001, 2113686 and the City entered into an amendment to AG 44/79 respecting the portion of the land covered by AG 30/88 (DAS 30/88). The amendment required construction of a larger turnaround at the south terminus of Fultz Boulevard, installation of additional hydrants, and the posting of security in the full amount of the estimated Stage II surface improvements; all prior to building permits on Lot 2, Block 1, Plan 26133 lands.

*History: Fultz Boulevard - Closing of the east - west leg*

On March 20, 2002, City Council approved the closing and purchase of the east-west leg of Fultz Boulevard and additional right-of-way opening at the south terminus of Fultz Boulevard (DAOC 4/2001). Council approvals on March 20, 2002 also permitted an amendment to AG 30/88 (DAS 30/88) (to be carried out by a further amendment to AG 44/79) to delete the requirements to pave the east-west Fultz Boulevard roadway and to construct a second access subject to enactment of a by-law under DAOC 4/2001.

On November 26, 2003, Council passed By-law No. 157/2003 (i.e.; the closing of the east-west leg of Fultz Boulevard and the opening of an additional right-of-way sized for the establishment of a typical industrial local street cul-de-sac at the south end of Fultz Boulevard) referred to under DAOC 4/2001.

It is acknowledged, however, that the City and the Developer have yet to implement a further amendment to the June 20, 2001 Amending Agreement to AG 44/79 (DAS 30/88) related to the above noted March 20, 2002 approvals. Said amendment will be implemented along with the assignment to 7314290 Manitoba Ltd.

The subject areas of DAS 30/88 and DAOC 4/2001 are shown in Appendix "A" sketch attached for reference.

*Discussion: Development Restrictions and required Agreement Amendments:*

Addendum Agreement AG 44/79 (DAS 30/88) dated April 18, 1990 and amended June 20, 2001, in general, requires that prior to building permits being issued for the undeveloped lands legally known as Lot 2, Block 1, Plan 26133; the Developer post construction security for Stage II surface improvements and construct certain servicing improvements at the south terminus of Fultz Boulevard.

The opening and closing of Fultz Boulevard pursuant to By-law No.157/2003 (DAOC 4/2001) was passed by Council on November 26, 2003. As a result, an amending agreement is considered necessary to:

a) delete the current obligations imposed on the Developer to construct the east-west leg of Fultz Boulevard (now closed),
b) delete the current obligation to provide and construct a second means of public access,
c) provide for the construction of a permanent concrete industrial cul-de-sac at the south end terminus of the Fultz Boulevard (now opened) including the posting of sufficient developer security, as determined by and to the satisfaction of the Director of Public Works.

The Winnipeg Public Service has no objections to this assignment request, subject to the new proponent (7314290 Manitoba Ltd.) providing an amendment to AG 44/79 (DAS 30/88) to address a), b) and c) above, including, without limitation, the following as part of item c) works:

d) the removal of existing encroachments within the public right-of-way and modifications as necessary to the existing infrastructure including private approaches and private lands to accommodate the industrial cul-de-sac, at the south end terminus of the Fultz Boulevard, to the satisfaction of the Director of Public Works.

The Assignment of Development Agreement, signed by 7314290 Manitoba Ltd. and 2113686 Manitoba Ltd. is included as Appendix “B” attached.

The City has consented to the assignment of Development Agreements in the past.

**FINANCIAL IMPACT**

## Financial Impact Statement Date: April 4, 2017

## Project Name:

**ASSIGNMENT OF DEVELOPMENT AGREEMENT AG 44/79 – WHYTE RIDGE INDUSTRIAL DEVELOPMENT AGREEMENT AG 44/79 (DAS 30/88 – FULTZ BOULEVARD)**

**COMMENTS:**

There are no direct financial implications to the City associated with this report.

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

**CONSULTATION**

N/A

**OURWINNIPEG POLICY ALIGNMENT**

**01-1a OurWinnipeg; Approach to City Building**
**Direction 3: Promote Compact Urban Form and Manage the Extension of Municipal Services for New Growth**

In accordance with OurWinnipeg policies, intensification of land-use is supported when a full range of municipal services is provided. The construction of amenities aligns with those policies for development of the immediate area.

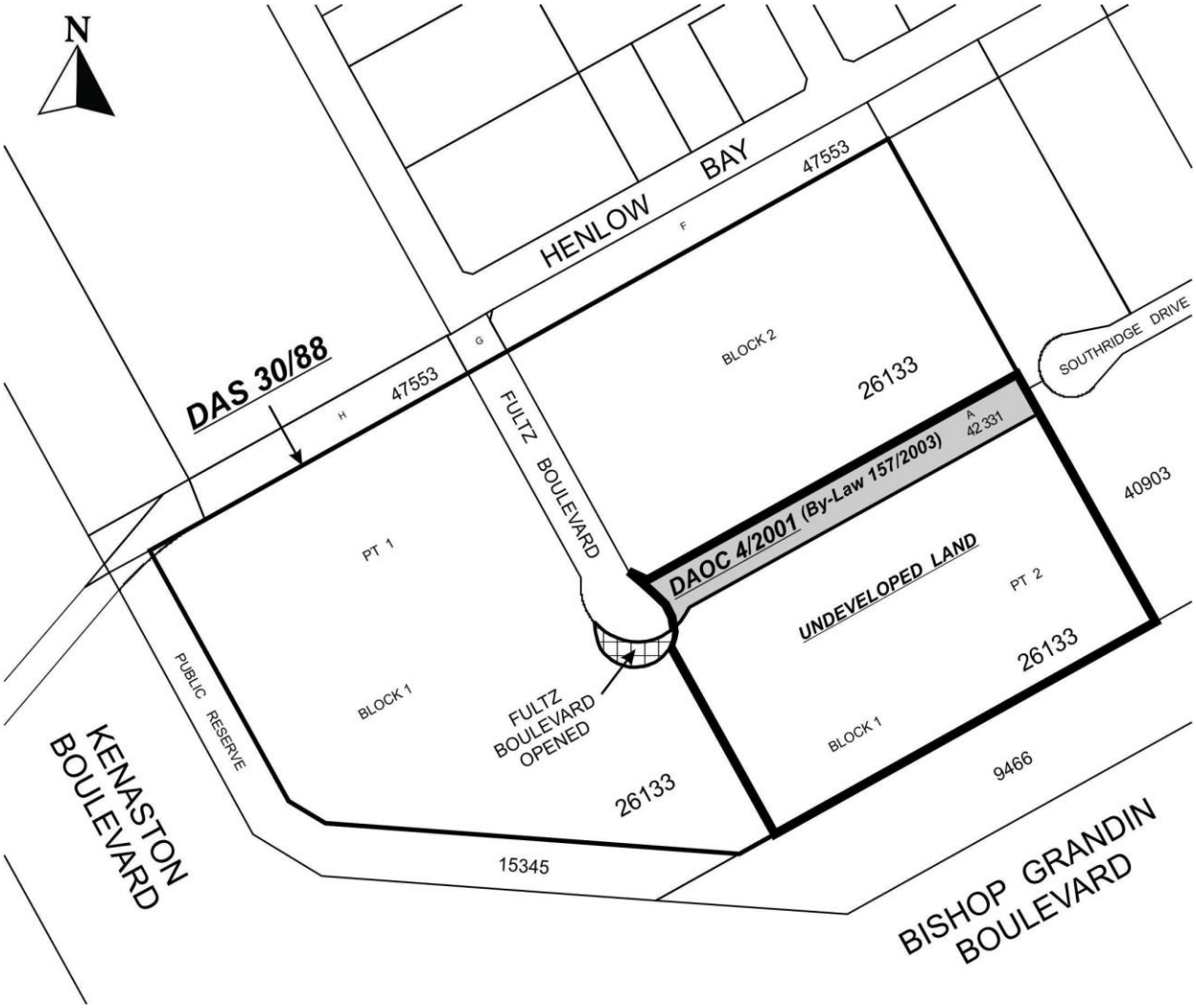
**SUBMITTED BY**

Department: Planning, Property and Development
Division: Land Development, Geomatics and Land Information Systems
Prepared by: Rob Deighton, P.Eng., Land Development Coordinator
Date: April 5, 2017
File No: AG 44/79 (DAS 30/88)

Attachments:
Appendix “A” – Sketch of Fultz Boulevard
Appendix “B” – Assignment Documentation

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**APPENDIX "A" – SKETCH OF FULTZ BOULEVARD**



## APPENDIX "B" – ASSIGNMENT DOCUMENTATION

### ASSIGNMENT OF DEVELOPMENT AGREEMENT

WHEREAS:

1. Whyte Ridge Industrial Developments Ltd. ("Whyte Ridge") and The City of Winnipeg ("City") entered into Development Agreement AG 44/79 dated April 16, 1980 respecting land generally located west of Waverley Street, south of Chevrier Boulevard, east of Kenaston Boulevard and north of Bishop Grandin Boulevard, in the City of Winnipeg, in the Province of Manitoba ("AG 44/79");

2. AG 44/79 has been amended several times between 1980 and 2001;

3. Below in this Assignment, "AG 44/79" refers to AG 44/79 as amended;

4. On March 26, 1998 the City consented to Whyte Ridge assigning AG 44/79 and all of Whyte Ridge's rights, entitlements, interests and obligations as the Developer under AG 44/79 to Sun-X Properties Ltd. ("Sun-X");

5. On June 20, 2001, under development application no. DAS 30/88, Sun-X and the City entered into an amendment to AG 44/79 respecting a portion of the land covered by AG 44/79 ("AG 30/88");

6. On March 20, 2002 Council of the City ("Council") approved certain amendments to AG 30/88 (to be carried out by an amendment to AG 44/79) to delete certain servicing requirements subject to enactment of a by-law under DAOC 4/2001 (the closing of the east-west leg of Fultz Boulevard);

7. On November 26, 2003 Council passed the by-law referred to in clause 6 above (By-law No. 157/2003), however, amendments to AG 30/88 (by further amendment to AG 44/79) were not executed by the City and Sun-X;

8. In 2007 Sun-X changed its company name to 2113686 Manitoba Ltd. ("2113686"); and

9. 2113686 and 7314290 Manitoba Ltd. ("7314290") are requesting the City's consent to 2113686 assigning AG 44/79 and all of 2113686's rights, entitlements, interests, and obligations as Developer under AG 44/79 to 7314290.

NOW THEREFORE in consideration of one dollar ($1.00) paid by each of 2113686 and 7314290 to the other, the receipt and sufficiency of which 2113686 and 7314290 hereby acknowledge, 2113686 and 7314290 covenant and agree that:

1. 2113686 hereby assigns AG 44/79 and all of 2113686's rights, entitlements, interests and obligations as Developer under AG 44/79 to 7314290.

2. 7314290 hereby agrees to 2113686 assigning AG 44/79 and all of 2113686's rights, entitlements, interests and obligations as Developer under AG 44/79 to 7314290, and shall indemnify and save harmless 2113686 in this regard.

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**SIGNED, SEALED AND DELIVERED** this 3rd day of February, 2017

BY: **2113686 MANITOBA LTD.**

Witness (signature): K Dockery Brouwer
Name (print): K DOCKERY BROUWER
Address (print): 119 Shawnessy Dr SW
Calgary AB

Per: (signature):
Name (print): ~~Richard Morden~~
Title (print): **Authorized Signing Officer**

(affix corporate seal)

*I have authority to bind 2113686 Manitoba Ltd.*

Witness (signature): K Dockery Brouwer
Name (print): K DOCKERY BROUWER
Address (print): 119 Shawnessy Dr SW
Calgary AB

Per: (signature):
Name (print): Geoff Hwang
AUTHORIZED SIGNING OFFICER
Title (print):

(affix corporate seal)

*I have authority to bind 2113686 Manitoba Ltd.*

**AND** this 3rd day of February, 2017

BY: **7314290 MANITOBA LTD.**

Witness (signature): L. Wigg
Name (print): L. Wigg
Address (print): #31 5221 204 St.
Langley, BC V3A 5X1

Per: (signature):
Name (print): W.G. HARBOTTLE
Title (print): PRESIDENT

(affix corporate seal)

*I have authority to bind 7314290 Manitoba Ltd.*