Minute No. 38
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 7, 2017

Item No. 7 Encroachment Agreement – 225 Carlton Avenue (Fort Rouge – East 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 proposed terms and conditions attached as Schedule "A" for an encroachment agreement in favour of TN Square Inc. (hereinafter referred to as the ``Licensee``) for the purpose of constructing and maintaining an underground conduit, identified as "Encroachment to facilitate MTS conduit" on Misc. Plan 15203 (Schedule B) and overhead canopy affixed to 225 Carlton Avenue, identified as "Encroachment-Canopy", on misc. plan 15204 (Schedule C) be approved (hereinafter referred to as the ``Lands``).

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 Chief Administrative Officer 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 – November 7, 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 November 8, 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 November 7, 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: **Proposed Encroachment Agreement to allow the Use of Graham Avenue Right-of-Way for the Purpose of Constructing an Overhead Canopy and Underground Conduit Servicing 225 Carlton Avenue**

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

This report requests approval of an Encroachment Agreement between the City and True North Square Inc. to allow for the construction and maintenance of an overhead canopy and underground conduit servicing 225 Carlton Avenue (a new tower currently under construction as part of True North Square).

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule “A” for an encroachment agreement in favour of TN Square Inc. (hereinafter referred to as the ``Licensee``) for the purpose of constructing and maintaining an underground conduit, identified as “Encroachment to facilitate MTS conduit” on Misc. Plan 15203 (Schedule B) and overhead canopy affixed to 225 Carlton Avenue, identified as “Encroachment-Canopy”, on misc. plan 15204 (Schedule C) be approved (hereinafter referred to as the ``Lands``).

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 Chief Administrative Officer 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 has negotiated Terms and Conditions of an Encroachment Agreement, in favour of TN Square Inc.

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 Plans No. 15203 and 15204.

HISTORY/DISCUSSION

An application was submitted to the City's Zoning and Permits Branch to construct and maintain an overhead canopy and underground conduit in the Graham Avenue 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 amendment agreement in favour of TN Square Inc.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: September 29, 2017

Project Name:

First Year of Program **2017**

Proposed Encroachment Agreement to allow the Use of Graham Avenue Right-of-Way for the Purpose of Constructing an Overhead Canopy and Underground Conduit

	2017	2018	2019	2020	2021
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	4,298	3,138	3,138	3,138	3,138
Net Cost/(Benefit)	$ (4,298)	$ (3,138)	$ (3,138)	$ (3,138)	$ (3,138)
Less: Existing Budget Amounts	(4,298)	(3,138)	(3,138)	(3,138)	(3,138)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenue in 2017 consists of the encroachment fee of $2,762.50, an administration fee of $375 and a one-time document preparation fee of $1,160. Revenues from 2018 onward consist of the encroachment and administration fees.

"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 Division

OURWINNIPEG POLICY ALIGNMENT

OurWinnipeg Reference:

- **Section 01-3- Direction 5- Demonstrate Visionary Leadership and Commitment to Viable Long-Term Planning**
- **Section 01-4- Direction 6 – Encourage Residential Development Downtown**
- **Section 01-5- Direction 6- Plan for Sustainable and Connected Recreation and Leisure Infrastructure**

SUBMITTED BY

Department Planning, Property and Development
Division Municipal Accommodations
Prepared by: Nolan Winters, Property Administrator
Date: October 11, 2017
File No.: MA2017-206

Attachments:
- Schedule A
- Schedule B – Misc. Plans No. 15203
- Schedule C – Misc. Plans No. 15204

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SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR A WORKS AGREEMENT TO ALLOW FOR THE USE OF TWO SEGMENTS OF THE PUBLIC RIGHT OF WAY ADJACENT TO 225 CARLTON STREET

Use:	Construction and maintenance of a conduit and canopy servicing 225 Carlton Street (hereinafter called the "Works").
Licensor:	The City of Winnipeg
Licensees:	TN Square Inc. (hereinafter called the "Licensee")
Encroachment Areas:	Shown and identified as 'Encroachment to facilitate MTS conduit' on Misc. Plan No. 15203 and 'Encroachment- Canopy' on Misc. Plan No. 15204, attached; (hereinafter called the "Encroachment Area")
Term:	Annually continuing, commencing the first day of the month following approval from the City's Standing Committees and Council;
Fee:	$2762.50 per annum plus GST; plus an annual administrative fee of $375.00 plus GST; in accordance with the fees set forth in the City's Encroachment By-law 692/74 as amended from time to time. In the event the fees in said By-law are revised or amended, the Licensee agrees to pay the revised or amended fee.
Document Preparation: Fee	A one-time Document Preparation Fee in the amount of $1,160.00 plus GST payable prior to the commencement date;
Municipal Taxes:	All property taxes, school taxes, local improvements, license fees, business tax, etc., which may be charged in respect of the use and occupation of the premises.
Insurance:	The Licensee will obtain and maintain insurance or require it's Contractor to obtain and maintain the following insurance during the construction of the conduit and canopy: a) Wrap up liability insurance in the amount of at least five million dollars ($5,000,000) per occurrence, such liability policy to name the Licensees, Licensor, all contractors, sub-contractors, architects and engineers as insureds and contain evidence of a cross liability clause, products and completed operations, bodily injury, property damage, and contractual liability and including 24 months completed operations after completion. The City of Winnipeg shall be added as an Additional Insured. The Licensee will obtain and maintain the following insurance during the full term of the agreement: a) Commercial general liability insurance in the amount of at

least five million dollars ($5,000,000) per occurrence and five million dollars ($5,000,000) general aggregate. Such liability policy to include The City of Winnipeg as an additional insured and contain evidence of a cross liability clause, products and completed operations and contractual liability.

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;

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 coverage's as reasonably required from time to time reflective of the legal environment and insurance industry standards, during the continuance of this encroachment agreement and any subsequent extensions thereof, provided that the City shall give the Licensees written notice and shall request reasonable change;

Cancellation: Ninety (90) days written notice;

Termination: Provided that the City has provided 90 days written notice to remedy a default of the Licensee and the Licensee has failed to remedy the default to the satisfaction of the Director, then the City has the right to immediately terminate the agreement.

Conditions: The Licensee understands and agrees that the 'Encroachment Areas' is licensed on an 'as is' basis.

The Licensee will not erect or permit the erection of any structure, other than the Works referred to herein, nor make any excavation other than as required for the development of the Works;

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Encroachment Areas including, but not limited to, license fees, business tax, garbage removal, janitorial service, snow removal from the Works and security costs.

Immediately following construction or removal of the Works, the Licensee agrees to restore the lands in or adjacent to the Encroachment Areas to a condition at least equal to the condition they were in prior to the said construction or removal. The Licensee is responsible for any and all damages to the Encroachment Areas, the Works and adjacent lands, resulting from its use and occupation of the Encroachment Areas.

That if at any time during the term the City's use or requirements for the Encroachment Areas reasonably necessitate the relocation and/or modification of the Works, the Licensee is responsible to do all things necessary to relocate and/or modify the Works as required by the City and to pay all costs and expenses associated therewith. The City must give 6 months written before relocation or modification of the Works is required.

The Licensee is responsible to clean up litter in the immediate area as a result of use and occupation of the Encroachment Areas;

The City is permitted access to the Encroachment Areas at any time (twenty four hours a day, seven days a week) by its employees or other persons acting with its authorization, with or without equipment to maintain, operate, repair, inspect or rehabilitate the Works and appurtenances located within the Encroachment Areas. Any such maintenance, operations, repairs, inspections or rehabilitations of the Works made by the City shall become a debt due and owing by the Licensee to the City.

The Licensee will permit all utilities to enter the Encroachment Areas for maintenance, repair or installation of services at any time without notice to the Licensee and that any removal or relocation of existing facilities as a result of the development and construction of the Works will be at the expense of the Licensee. Prior to any construction, development, digging or excavation of the Encroachment Areas, the Licensee will contact:

- Manitoba Hydro and/or Centra Gas Manitoba Inc.at the Call-Before-You Dig line at 480-1212;
- MTS at the Buried Plan Location Service at 204-941-7267, 48 hours prior to excavation for further confirmation in the field;

The Licensee shall not assign this agreement without the prior written consent of the City. Should the building located at 225 Carlton St. be sold or transferred to a third party, the Licensee will obtain an acknowledgement and contractual undertaking by the purchaser or transferee in a form satisfactory to the City to be bound by the terms and conditions of the Works Agreement prior to such purchase or transfer taking place.

The Licensee will 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 transaction. This provision shall survive any termination, cancellation or expiration of this Agreement

That all applicable permits be obtained prior to any further development.

The Licensee will submit all construction plans for the Works and Encroachment Areas to the City's Underground Structures Branch for review and approval prior to commencing construction and will

thereafter construct in accordance with the approved plans.

The City advises that there is existing City infrastructure located within the Encroachment Areas. The Licensee will be responsible for all costs for any work, maintenance, repair or restoration that is required to the City's infrastructure as a result of the Lessee's use, development, construction, maintenance or repair of the Works or Encroachment Areas. The City's infrastructure located in the Encroachment Areas and adjacent includes, but is not limited to, the following:

- Graham Ave - a 250mm water main, a 300mm combined sewer main, various catch basins/curb inlets and their leads, manholes and 2 fire hydrants

The Licensee will ensure that the canopy drains into the building (as it appears to do in the submitted application) and is tied into the sewer system internally as opposed to external drain pipes spilling onto the sidewalk.

The Licensee will enter into a formal agreement with the City embodying the foregoing terms and conditions in the City's Standard Form Agreement and such other terms and conditions as the City Solicitor/Director of Legal Services on behalf of the City and TN, all acting reasonably deems necessary, provided such other terms and conditions shall not conflict or be inconsistent with the foregoing terms and conditions.

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.

TN SQUARE INC. HEREBY ACKNOWLEDGES AND AGREES WITH THE ABOVE TERMS AND CONDITIONS.

TN SQUARE INC.

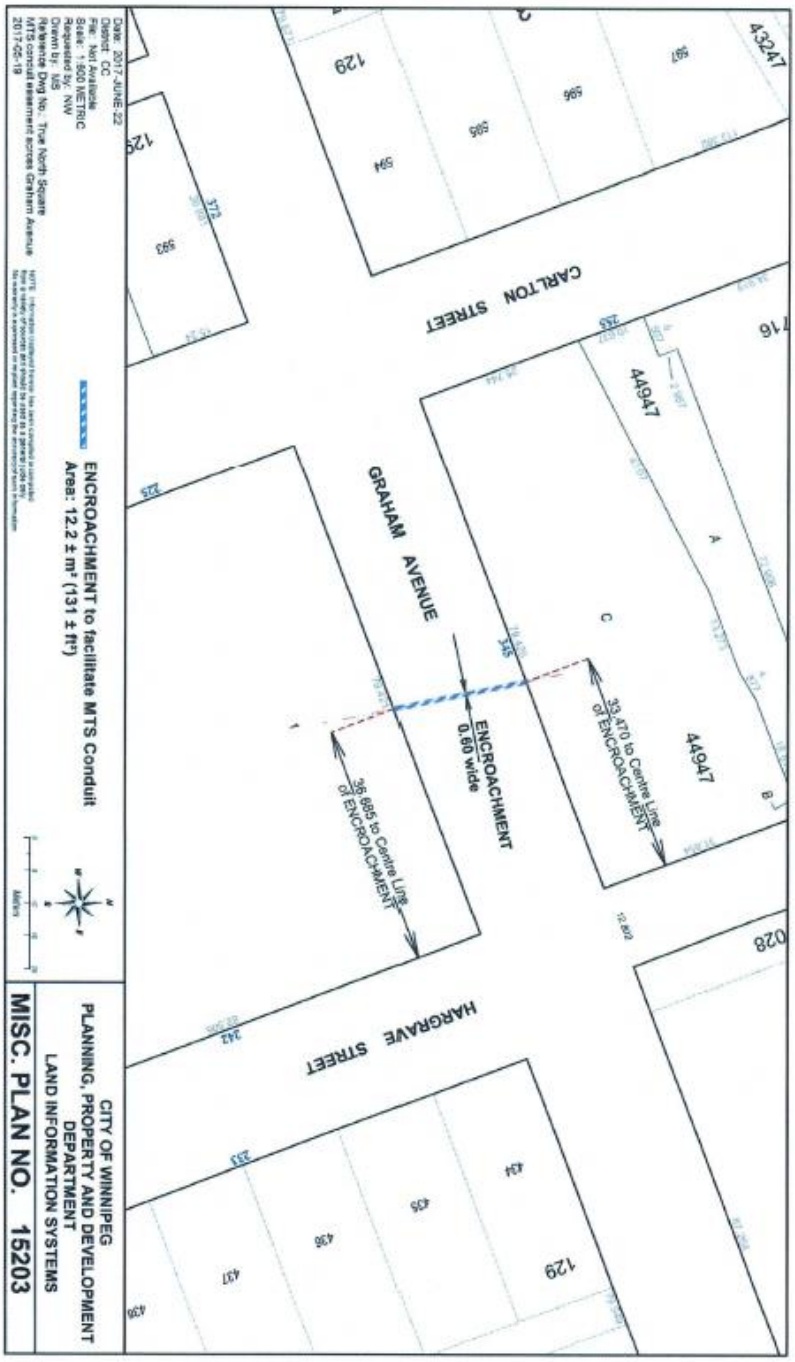
Per: _____

Name: James C.R. Ludlow

TITLE: President

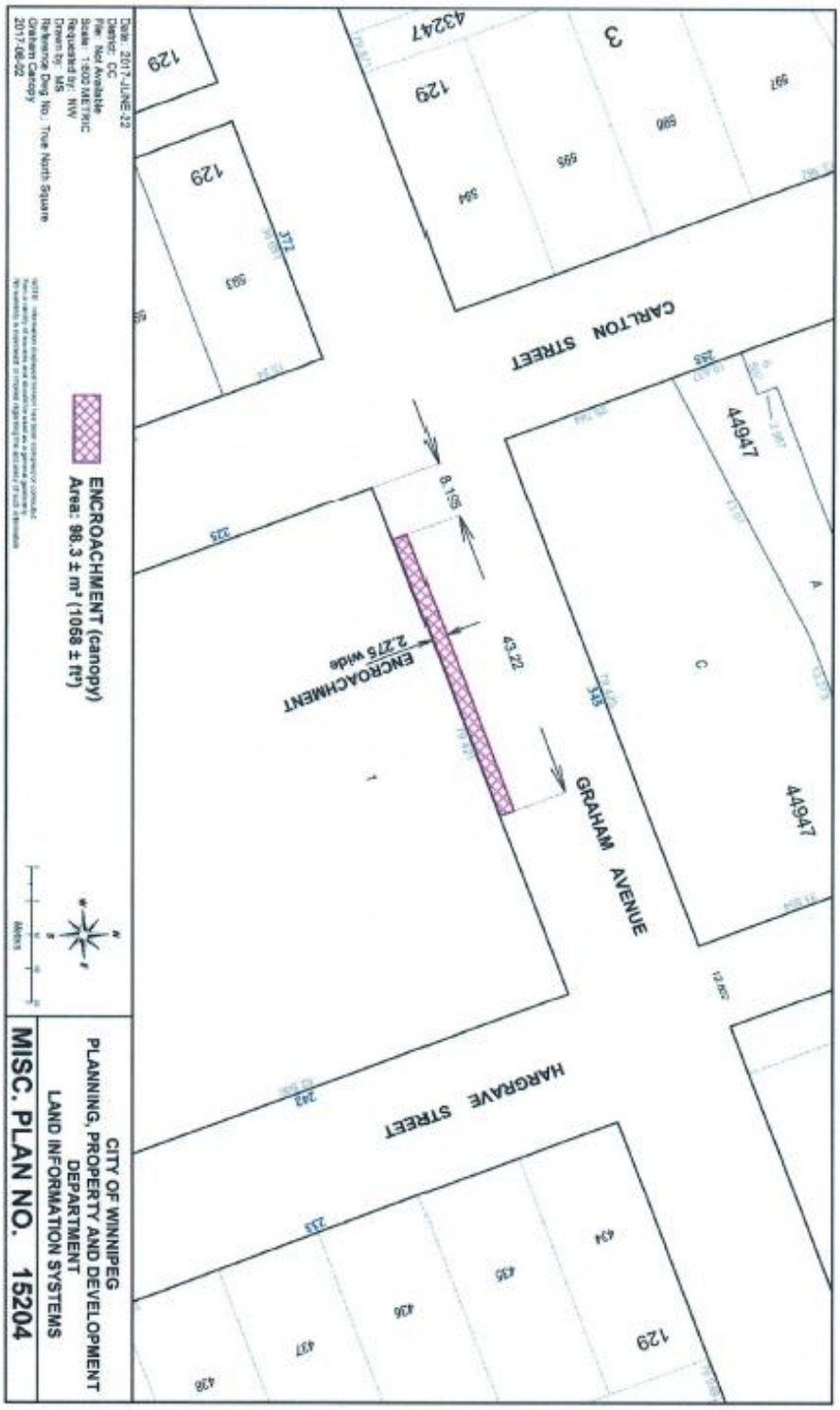
Date: September 18, 2017

SCHEDULE B


CARLTON STREET
GRAHAM AVENUE
HARGRAVE STREET
ENCROACHMENT
0.60 wide
33.470 to Centre Line of ENCROACHMENT
36.685 to Centre Line of ENCROACHMENT
44947
43247
ENCROACHMENT to facilitate MTS Conduit
Area: 12.2 ± m² (131 ± ft²)
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT
DEPARTMENT
LAND INFORMATION SYSTEMS
MISC. PLAN NO. 15203

6

SCHEDULE C


CARLTON STREET
GRAHAM AVENUE
HARGRAVE STREET
ENCROACHMENT
2.275 wide
43.22
8.159
ENCROACHMENT (canopy)
Area: 98.3 ± m² (1058 ± ft²)
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT
DEPARTMENT
LAND INFORMATION SYSTEMS
MISC. PLAN NO. 15204