Minutes – Executive Policy Committee – December 6, 2017

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – November 27, 2017

Item No. 13 Easement Agreement in Favour of Hôtellerie St. Norbert Guest House Inc., operating as St. Norbert Arts Centre (SNAC) – Access and Waste Water Private Connection Line (South Winnipeg – St. Norbert Ward)

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. That a Waste Water Private Connection Line Easement Agreement in favour of L'Hotellerie St. Norbert Guest House Inc., operating as St. Norbert Arts Centre (hereinafter referred to as "SNAC"), for the purpose of installing, maintaining and repairing a private waste water connection line under a portion of City-owned parkland identified as "City Owned Property" on the attached Misc. Plan No. 13501/2 and identified as "Proposed Sewermain –Waste Water Connection Easement" on said Misc. Plan, be approved.

2. That the City enter into an easement 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 Chief Administrative Officer be delegated the authority to negotiate and approve the final terms and conditions of the easement 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 any such other terms and conditions deemed necessary by the Director of Legal Services/City Solicitor in order 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 27, 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 concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On November 27, 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: Easement Agreement in Favour of Hôtellerie St. Norbert Guest House Inc., operating as St. Norbert Arts Centre (SNAC) – Access and Waste Water Private Connection Line

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	M. Ruta	D. McNeil

EXECUTIVE SUMMARY

The proposed easement will benefit the owner of 100 Ruines Du Monastere St. Norbert Arts Centre (SNAC) by accommodating the connection of a private sewermain/waste water pipe under a portion of City-owned parkland that will extend and connect to the existing privately-owned sewer line located at 80 Ruines Du Monastere, currently occupied by the Southwood Golf and Country Club (SGCC).

RECOMMENDATIONS

1. That a Waste Water Private Connection Line Easement Agreement in favour of L'Hotellerie St. Norbert Guest House Inc., operating as St. Norbert Arts Centre (hereinafter referred to as "SNAC"), for the purpose of installing, maintaining and repairing a private waste water connection line under a portion of City-owned parkland identified as "City Owned Property" on the attached Misc. Plan No. 13501/2 and identified as "Proposed Sewermain –Waste Water Connection Easement" on said Misc. Plan, be approved.

2. That the City enter into an easement 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 Chief Administrative Officer be delegated the authority to negotiate and approve the final terms and conditions of the easement 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 any such other terms and conditions deemed necessary by the Director of Legal Services/City Solicitor in order 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

In accordance with Section 205 of The City of Winnipeg Charter, all dispositions of property designed or acquired for park or cemetery purposes require approval of at least 2/3 of all members of Council. The subject City property is zoned 'A' – Agricultural' but falls under Parks Jurisdiction. The subject easement is a disposition of an interest in land, and therefore falls under this section of The City of Winnipeg Charter.

IMPLICATIONS OF THE RECOMMENDATIONS

- The proposed easement requirement will limit the City's ability to use the parkland property and are for the exclusive benefit of the adjacent property owner.

- There are no regulatory or human resource implications associated with this report.

HISTORY/DISCUSSION

The City-owned parkland identified as "City Owned Property" on the attached Misc. Plan No. 13501/2, under Parks jurisdiction, is located south of Rue Des Trappistes between the La Salle River and the Ruines Du Monastere and is located adjacent to the Southwood Golf and Country Club (SGCC) property identified as "Parcel A, Plan 47448" on the attached Misc. Plan.

On March 18, 2011, a Steward for St. Norbert Arts Centre (SNAC), approached the City requesting to enter into an easement agreement, wherein they could utilize a portion of the City-owned parkland to connect to a privately-owned septic line located on their neighbour's property to the west. The SGCC, the adjacent neighbour, previously installed a septic line that connects with City services. The proposal involves SNAC entering into a shared services agreement and connecting to the SGCC existing private sewer line.

The SNAC is currently connected to City services for water supply but not sewage. Their effluent is stored in septic tanks and then removed by truck service each week. Due to the truck's size and capacity for transport, its operation must occur multiple times per week during their peak season (summer). The proposed works are required to reduce this transportation process and limit the disruption during their peak season.

In March 2015, the Water and Waste Department received a subsequent request to proceed with the finalization of the proposed easement over the "City Owned Property". Representatives acting on behalf of SNAC indicated they were hoping to have their permits in place by June in order to fulfill their obligations with the City of Winnipeg Community Incentive Grant.

On June 22, 2015, a SNAC representative ensured they had entered into discussions with SGCC regarding the proposal of connecting to their sewer line. Furthermore, SNAC had confirmed SGCC were amenable to taking their septic water (only).

A new representative from SNAC contacted the department to once again renew their request for an easement with the City on January 17, 2017. On June 7, 2017, SNAC forwarded a copy of the Shared Services Agreement, outlining the terms and conditions of their arrangement which was signed by both parties involved, SNAC and SGCC.

The specific works proposed on the City's property are not being done at the need or request of the City, the City's Water and Waste Department, or the City's waterway engineer; although, as a portion of the proposed work will be situated within the Waterways Regulated Area (within 350' of the La Salle River) as per the City of Winnipeg Waterway By-law 5888/92, a Waterways Permit must be obtained prior to commencing construction activities.

The proposed easement area was circulated to the Parks and Open Spaces Division of Public Works and the Urban Design Division of the Planning, Property and Development Department. No objections were received to the proposed easement request as any concerns raised will be addressed in the easement agreement; however, a Waterways permit and a Shared Services Agreement, have been identified as required for this project to proceed.

At this time, the Public Service is requesting that Council approve the proposed easement area and that the Chief Administrative Officer be delegated the authority to finalize the terms and conditions of the Easement Agreement, and any other terms and conditions deemed necessary by the Director of Legal Services/City Solicitor in order to protect the interests of the City.

The Planning, Property and Development Department intend to grant the SNAC a permanent easement within that portion of parkland shown hatched and identified as, "Proposed Sewermain – waste water connection easement" on Misc. Plan 13501/2 for the one-time sum of $3,850. The purchase price for the right of easement was determined by an internal appraisal report.

The Ward Councillor has been consulted with in regards to this matter.

FINANCIAL IMPACT

Financial Impact Statement

Date: November 3, 2017

Project Name:

First Year of Program 2018

PROPOSED EASEMENT AGREEMENT IN FAVOUR OF HÔTELLERIE ST. NORBERT GUEST HOUSE INC. OPERATING AS ST. NORBERT ARTS CENTRE (SNAC) – ACCESS AND WASTE WATER PRIVATE CONNECTION LINE

	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	3,850	-	-	-	-
Net Cost/(Benefit)	$ (3,850)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(3,850)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenue of $3,850 represents the one-time easement fee, assumed to be paid in January 2018.

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

CONSULTATION

This Report has been prepared in consultation with:

Legal Services as to legal issues
Public Works Department
Ward Councillor

OURWINNIPEG POLICY ALIGNMENT

Not applicable

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Leah Furedi
Date: November 7, 2017
File No: 7814/B/V5 & V6

Attachments:

Schedule ‘A’ – Terms and Conditions
Schedule ‘B’ – Misc. Plan No. 13501/2

o:\reports directive\real estate\sales\(lf) proposed easement agreement in favour of l'hotellerie st. norbert guest house inc. operating as st. norbert arts centre.docx

Schedule "A"

Proposed Terms and Conditions for Easement Agreement on City Owned Property, Shown as "Proposed Sewermain – Waste Water Connection Easement" On Attached Misc. Plan No. 13501/2

Grantor:	The City of Winnipeg (hereinafter referred to as the "City").
Grantee:	L'Hotellerie St. Norbert Guest House Inc., operating as St. Norbert Arts Centre (hereinafter referred to as the "Grantee").
Term:	In perpetuity, commencing the first day of the month following approval from the City's Standing Committee and/or Council.
Fee:	One-time fee of THREE THOUSAND EIGHT HUNDRED & FIFTY DOLLARS ($3,850.00) plus GST for the right of easement.
Easement Area:	That portion of City-owned land shown outlined, hatched and identified as "Proposed Sewermain – Waste Water Connection Easement" on Misc. Plan No. 13501/2,attached hereto as Schedule "B", with such amendments as determined necessary by the Director of Planning, Property and Development (hereinafter referred to as the "Director") (hereinafter referred to as the "Easement Area").
Purpose:	For the purpose of entering upon and using the Easement Area to do all things necessary thereon to construct, install, maintain, inspect, repair, remove and/or replace a low pressure sewer system/waste water line to connect to a privately owned sewer line located on the adjacent property at 80 Rue des Ruines du Monastere (hereinafter referred to as the "Works") and not for any other purpose except with the prior written consent of the Director.
Cancellation & Default:	Upon default or breach of the Easement Agreement, the City may either terminate the agreement or remedy the default at the Grantee's expense. If the Easement Agreement is terminated, the Grantee shall remove the Works from the Easement Area and upgrade/revert the buildings or structures on the Grantee's property at 100 Rue des Ruines du Monastere to comply with any building codes in place at that time. If the Easement Agreement is terminated, the Grantee shall also undertake to discharge the caveat to be registered against title to the Easement Area and 100 Rue des Ruines du Monastere evidencing registration of the Easement Agreement.

Insurance:

The Grantee shall purchase and keep in force during the term of this agreement commercial general liability insurance in the amount of at least two million dollars ($2,000,000) per occurrence. Such liability policy to include the City as an additional insured and shall contain contractual liability, sudden and accidental pollution liability and a cross liability clause.

The Grantee shall ensure that any contractor hired to construct, install, maintain, repair, remove and/or replace the low pressure sewer system/waste water line shall purchase and keep in force during the term of this agreement commercial general liability insurance in the amount of at least two million dollars ($2,000,000) per occurrence. Such liability policy to include the City as an additional insured and shall contain contractual liability, sudden and accidental pollution liability and a cross liability clause.

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 Grantee;

The Grantee 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 Grantee shall file with the City a certificate of insurance in a form satisfactory for the City's Supervisor of Insurance;

The City shall have the right to alter the limits and/or coverage's as reasonably required from time to time during the continuance of this Easement Agreement, provided that the City shall give the Grantee reasonable notice and shall request reasonable change;

Easement Conditions :

1. For the one-time fee of $3,850.00 plus GST, the City to grant the Grantee and its successors, assigns, servants, employees, agents, independent contractors, licensees and invitees, a right of easement and access to the Easement Area, as shown on Misc. Plan No. 13501/2, to construct, install, maintain, inspect, repair, remove and/or replace the Works, at the Grantee's expense.

2. The Grantee shall have prepared a Plan of Easement in reference to Misc. Plan No. 13501/2, delineating the Easement Area and will be responsible for all associated costs, including costs for registration fees at the Winnipeg Land Titles Office.

3. The Grantee acknowledges and agrees to accept the Easement Area on an "as is" basis and 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 Easement Area for any use or purpose, nor as to any environmental conditions which may exist.

4. When any construction, installation, maintenance, inspection, repair, removal or replacement of the Works is undertaken in the Easement Area, the Grantee shall:

    a. Restore the Easement Area, at its sole cost, to as good a condition as prior to the commencement of such construction, installation, maintenance, inspection, repair, removal or replacement; and
    b. Employ appropriate measures to secure the Easement Area and protect the public who also has a right of access to the Easement Area.

5. The Grantee shall notify the City's Superintendent of Parks Services a minimum of 72 business hours in advance of scheduled maintenance of Works at the Easement Area if the Grantee intends to bring in equipment that may interfere or do damage to the grounds of the Easement Area.

6. The Grantee shall be responsible, at its sole cost, for repairing any damage to the Easement Area and adjacent City property done as a result of access to or use of the Easement Area, or arising out of the Works, or arising out of the negligence of the Grantee's servants, employees or other persons acting with the Grantee's authorization. Such repairs shall restore the property and/or Easement Area to a condition as good or better as prior to the damage occurring, subject to review and approval by the City's Superintendent of Parks Services.

7. The Grantee shall, at its sole cost, effort and expense, keep the Works in good repair in accordance with industry standards.

8. This Easement Agreement runs with the lands and shall be binding on the Grantee and their successors, legal representatives, permitted assigns and successors-in-title to 100 Rue des Ruines du Monastere.

9. The Grantee will not transfer or convey the property at 100 Ruines Du Monastere without giving written notice to the Director and obtaining an acknowledgement from the proposed purchaser in a form satisfactory to the City Solicitor/Director of Legal Services that the proposed purchaser will be bound by the terms of the easement agreement as if the proposed purchaser has executed same in place of the Grantee.

10. The Grantee acknowledges and agrees that no buildings or permanent structures will be constructed within the Easement Area without prior written consent from the Director.

11. The Grantee shall indemnify and save harmless the City against and from all liabilities, obligations, damages or injuries (including death), claims, costs, fines, suits, demands, actions and causes of action that may arise out of this Agreement or from the use of the Easement Area.

12. The parties agree to register a caveat against the title of 100 Rue des Ruines Du Monastere and the Easement Area. If the caveat is discharged, struck out, vacated or disposed of for any reason, this agreement shall be deemed to have been breached.

13. The Grantee shall enter into a Shared Services Agreement with Southwood Golf and Country Club (owner of 80 Rue des Ruines du Monastere) with respect to the Works and will provide a signed copy of this agreement to the City.

14. The Grantee will respect the City's current use of the property as a public parking lot and park area and use commercially reasonable efforts not to interfere with that use during its use of the Easement Area.

15. The Grantee agrees to submit an application for a water way permit prior to beginning any construction in the Easement Area.

16. The Grantee shall comply with all laws, by-laws and regulations of any federal, provincial or municipal or other applicable authority, including, but not limited to the City's *Sewer By-law No. 92/2010*.

Other:

The City reserves the right for Bell MTS Inc., The Manitoba Hydro-Electric Board, the City's Water and Waste Department and any other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Easement Area for maintenance and/or repair of its facilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby.

The Grantee understands and agrees that employees, agents, and servants of the City have a right of access to enter the Easement Area at any time (24 hours a day, seven days a week), with or without equipment, for any purpose whatsoever, including but not limited to, those purposes related to viewing the state of repair, the safety, protection, preservation or improvement of the Easement Area, and for doing any work of maintaining or repairing

its utilities in or near to the Easement Area, without being responsible for any damage occasioned thereby.

The Grantee shall enter into an appropriate Easement Agreement with the City embodying the foregoing proposed Terms and Conditions and such other Terms and Conditions as the City Solicitor/Director of Legal Services deems necessary and in a form satisfactory to the Director of Legal Services in a form satisfactory to the City Solicitor/Director of Legal Services.

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

I/We, WENDY BLOOMFIELD, **being** duly

(Please print)

Authorized to act on behalf of **L'Hotellerie St. Norbert Guest House Inc.,** hereby agrees to enter into an easement agreement with the City of Winnipeg for the use of the City-owned lands identified as "Proposed Sewermain – Waste Water Connection Easement" on Misc. Plan No. 13501/2 in accordance with the proposed terms and conditions as outlined herein in Schedule "A".

L'HOTELLERIE ST. NORBERT GUEST HOUSE INC.

Per:

_____

_____

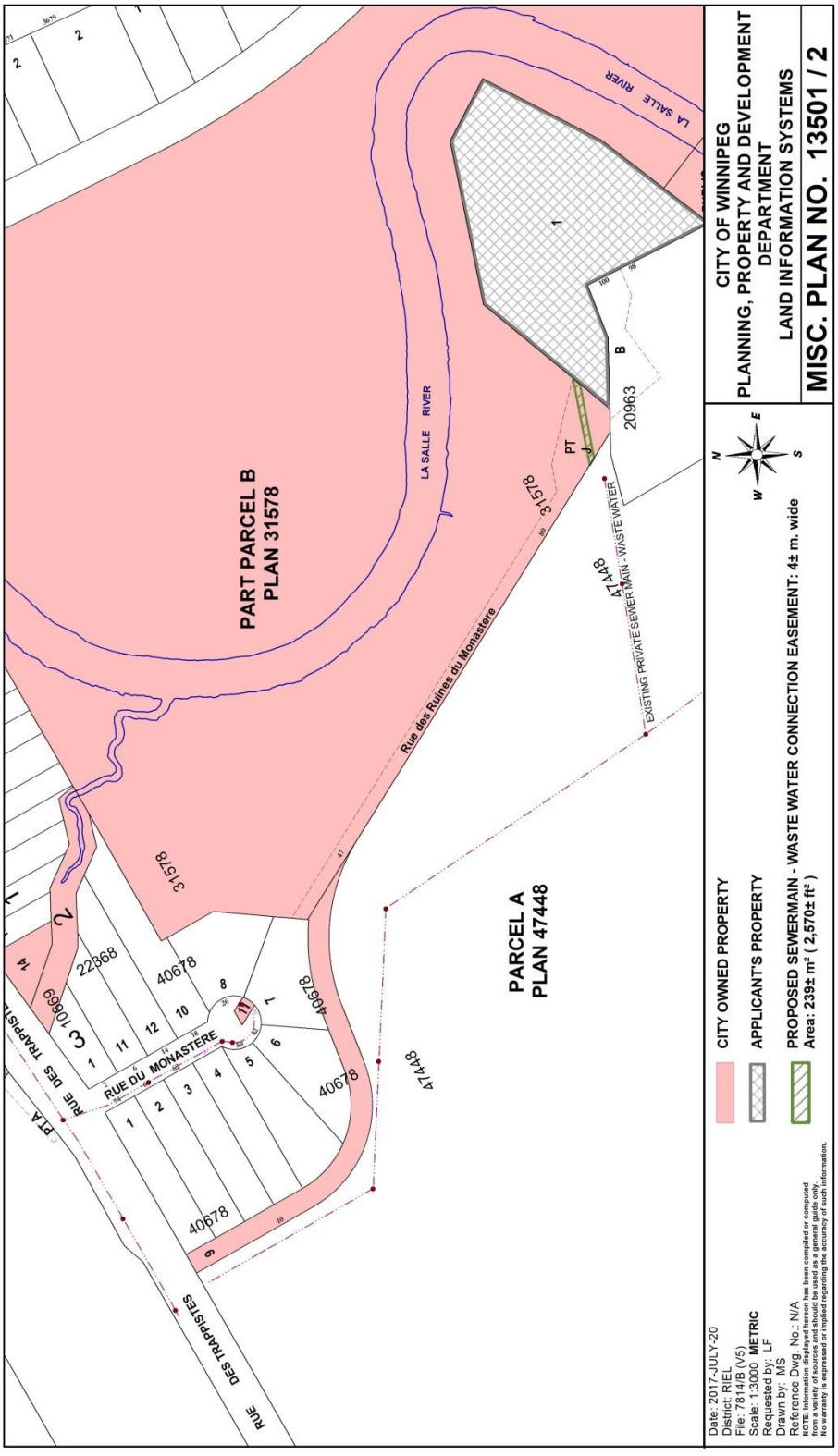
I have authority to bind the Corporation

Name: Wendy Bloomfield

Title: CO-CHAIR

Date: September 27, 2017

SCHEDULE 'B'


PART PARCEL B
PLAN 31578
PARCEL A
PLAN 47448
LA SALLE RIVER
Rue des Ruines du Monastere
EXISTING PRIVATE SEWER MAIN - WASTE WATER
RUE DU MONASTERE
RUE DES TRAPPISTES
CITY OWNED PROPERTY
APPLICANT'S PROPERTY
PROPOSED SEWERMAIN - WASTE WATER CONNECTION EASEMENT: 4± m. wide
Area: 239± m² (2,570± ft²)
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT
DEPARTMENT
LAND INFORMATION SYSTEMS
MISC. PLAN NO. 13501 / 2
Date: 2017-JULY-20
District: RIEL
File: 7814/B (V5)
Scale: 1:3000 METRIC
Requested by: LF
Drawn by: MS
Reference Dwg. No.: N/A