Minute No. 429
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 8, 2018

Item No. 4 Encroachment Agreement – Lands located on the West Side of Shahi Street
(South Winnipeg – St. Norbert Ward)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and adopted the following:

1. That the proposed Terms and Conditions for a License Agreement, attached hereto as Schedule A, in favour of the 6558098 Manitoba Ltd. for the land located on the west side of Shahi Street (identified as "Encroachment Area" on Misc. Plan No. 15223/2 in Schedule A) be approved.

2. That the City enter into, execute and deliver a License agreement with 6558098 Manitoba Ltd. and such other agreements (the "Ancillary 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 terms and conditions of the License agreement and the 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.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 8, 2018

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

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 13, 2018, 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 8, 2018, 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 for Lands located on the West Side of Shahi Street for the Purposes of Private Water and Sewer Main Piping

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 Planning, Property and Development Department ("Department") has negotiated the proposed Terms and Conditions of a License Agreement in favour of 6558098 Manitoba Ltd. (the "Licensee"). The Licensee is the owner of 99 Shahi Street, a site currently under development for condominium units. In order to connect to municipal water and sewer services, the Licensee requires a private service connection within the Shahi Street right of way.

The Licensee will be responsible for all costs associated with this License Agreement for an encroachment

The Ward Councillor concurs in the recommendation of the Department.

RECOMMENDATIONS

1. That the proposed Terms and Conditions for a License Agreement, attached hereto as Schedule A, in favour of the 6558098 Manitoba Ltd. for the land located on the west side of Shahi Street (identified as "Encroachment Area" on Misc. Plan No. 15223/2 in Schedule A) be approved.

2. That the City enter into, execute and deliver a License agreement with 6558098 Manitoba Ltd. and such other agreements (the "Ancillary 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 terms and conditions of the License agreement and the 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 Department has negotiated Terms and Conditions of a License Agreement for an encroachment in favour of the Licensee.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general, policy, regulatory, environmental, human resource, or other implications of this report.

The License Agreement may be terminated upon ninety (90) days written notice, should the City require these lands for any purpose in the future.

The Licensee will be responsible for all costs associated with this Agreement.

HISTORY/DISCUSSION

The Licensee is currently constructing condominium units at 99 Shahi Street (identified on Schedule B) and, as the property does not front along municipal water or sewer services, the Licensee needs to construct private services within the right of way (an encroachment) in order to connect to the nearest municipal services.

An encroachment application was submitted to the City's Zoning and Permits Branch to build and maintain private water and sewer piping in the right of way located on the west side of Shahi Street between Point West Way and the Perimeter Highway.

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 (attached as Schedule A).

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 Department has negotiated proposed Terms and Conditions of a License Agreement in favour of the Licensee. The rent for the Agreement was derived from a current market value appraisal.

The Ward Councillor concurs in the recommendation of the Department.

FINANCIAL IMPACT

Financial Impact Statement

Date: May 10, 2018

Project Name:

First Year of Program **2018**

Encroachment Agreement for Lands located on the West Side of Shahi Street for the Purposes of Private Water and Sewer Main Piping

	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	1,986	812	828	845	862
Net Cost/(Benefit)	$ (1,986)	$ (812)	$ (828)	$ (845)	$ (862)
Less: Existing Budget Amounts	(1,986)	(812)	(828)	(845)	(862)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2018 consist of the encroachment fee of $416, the annual admin fee of $380 and the one-time document preparation fee of $1,190. In 2019 forward, revenues consist of the encroachment and admin fees, which are assumed to increase by a rate of inflation of 2%.

"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)
Risk Management (as to insurance requirements)
Ward Councillor

OURWINNIPEG POLICY ALIGNMENT

01-1a – City Building- Direction 1: Develop and Apply Direction Strategies

01-1a – City Building- Direction 3: Promote Compact Urban Form and Manage the Extension of Municipal Services for New Growth

01-1c –New Communities – Key Community: New Communities will continue to play an important role in accommodating the city's projected population growth. These New Communities will be planned as complete from the outset and will continue to achieve a high standard of sustainability in planning, design, construction and management.

SUBMITTED BY

Department: Planning, Property and Development Department
Division: Real Estate and Land Development
Prepared by: Nolan Winters, Property Administrator
Date: May 15, 2018
File No: 8927

O:\Reports Directive\Real Estate\Leasing\2018\(Nw) Proposed Encroachment Agreement- 99 Shahi Street- Private Water And Sewer Mains.Docx

Attachments:
Schedule A – Proposed Terms and Conditions
Schedule B – Site Plan

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR UNDERGROUND SEWER AND WATER PIPING ON THE WEST SIDE OF SHAHI STREET

Use:	Underground sewer and water piping on the West side of Shahi Street, between Point West Way and the Perimeter Highway.
Licensee:	6558098 Manitoba Ltd. (herein called the "Licensee");
Area:	Shown and identified as 'Encroachment Area' on Misc. Plan No. 15223/2 attached (herein called the "Encroachment Area");
Term:	Annually 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 and approved by the City's Director of Planning, Property and Development (hereinafter called the "Director");
Rental:	$416.00 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 $380.00 plus GST;
Document Preparation Fee:	A one-time Legal Services Document Preparation Fee in the amount of $1,190.00 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 Encroachment Area.
Other Fees, Licenses, Taxes etc:	The Licensee is responsible for all other license fees, business tax, levies, etc. which may be charged in respect of the use and occupation of the Encroachment Area.

Insurance:

The Licensee shall purchase and keep in force during the full term of the agreement the following insurance coverage:

a) 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, owners and contractors protective liability, unlicensed motor vehicle liability, non-owned automobile liability, contingent employer's liability and products and completed operations liability;

b) Automobile liability insurance for owned automobiles to be used for or in connection with this agreement in the amount of at least five million ($5,000,000.00) inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence;

The Licensee shall purchase or cause the construction or maintenance Contractor to purchase and keep in force during construction, installation, repair or maintenance a) and b) above as well as the following insurance coverage:

Contractor's pollution liability insurance (CPL) written on an annual term in an amount not less than two million ($2,000,000.00) dollars per occurrence and five million ($5,000,000.00) in the aggregate. Such policy to provide for third party injury and property damage claims including clean-up costs and transported cargo as a result of pollution conditions arising suddenly or gradually from the Contractor operations and completed operations with the City of Winnipeg added as an additional insured.

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;
Termination:	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 Encroachment Area that is identified as "Encroachment Area" on Misc. Plan No. 15223/2 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 Encroachment Area is licensed on an "as is" basis.
	The City shall have the right to access the Encroachment Area 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 Encroachment Area without being responsible for any damage occasioned thereby.

The Licensee shall ensure that no other sewer connections are hooked up and connected to the Licensee's Sewer.

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 Encroachment Area at any time without notice to the Licensee for maintenance, repair or installation of their utilities without 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 when working in proximity to all natural gas mains.

- Manitoba Hydro has reviewed the design for the water and sewer main installation on Waverley Street and has no concerns however, Manitoba Hydro makes no representations or warranties in that regard.

- There exists a main (as shown in the attached schedule `B`) in the area of development that is not shown in the submitted drawings. Please note that the image does not show gas services and the main may be exposed by hand or soft dig methods to verify location.

- All construction operations within the vicinity of natural gas pipelines are to take place in a manner so as not to damage or cause detriment to the integrity of the natural gas pipeline. Any damages to the coating must be reported to and repaired at

no cost by Manitoba Hydro prior to backfilling.

- Please note that the requirements of Manitoba Hydro's Safe Excavation and Safety Watch guidelines shall apply. All natural gas pipelines and service lines must be properly located and marked by Manitoba Hydro personnel. This can be arranged by visiting ClickBeforeYouDigMB.com or call 1-800-940-3447. Construction operations are not to commence unless these conditions are adhered to.

- Please note that all construction drawings requiring review or approval must be mailed to Gas Design, 820 Taylor Avenue (1) Winnipeg, Manitoba, R3M 3T1. If you wish to send construction drawings electronically, they may be sent to GasDesign@hydro.mb.ca

- If you have any questions or comments, please contact Phil Robertson, P.Eng.; Gas Design Engineer at (204) 360-5709 (e-mail: probertson@hydro.mb.ca).

The Water and Waste Department has the following comments:

- These new proposed services are subject to review and approval by the Water and Waste Department. They must meet all requirements and conditions set forth by the Department and the Customer Technical Services Branch.

- 'Click before you Dig Manitoba' (http:..www.clickbeforeyoudig.com/) must be contacted to ensure that locates are preformed, prior to any construction.

- Plans for any construction in the City right-of-way must be submitted to Underground Structures Branch for review and approval, prior to any construction.

The Licensee shall ensure all applicable permits be obtained, including an occupancy permit, prior to any further development.

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.

For all necessary Sewer work and maintenance, the Licensee shall employ only contractors that are licensed and approved annually by the pursuant to the provisions of The City of Winnipeg Sewer By-Law No. 92/2010. The Licensee shall ensure that each such licensed contractor files evidence of insurance with the City in accordance with the City's licensing requirements pursuant to The City of Winnipeg Sewer By-Law No. 92/2010 and maintains such insurance for the full term of the agreement;

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

The Licensee shall not assign this agreement or sublet the Encroachment Area 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 Encroachment Area 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 Encroachment Area reasonably necessitate the relocation and/or modification and/or removal of the Licensee's property on the Encroachment Area, 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 Encroachment Area 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 Encroachment Area 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 Encroachment Area, 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 Encroachment Area 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 Encroachment Area requires 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 Encroachment Area 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 Encroachment Area 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 Encroachment Area 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 Encroachment Area 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 Encroachment Area 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 Encroachment Area for any use or purpose, nor as to any environmental conditions which may exist;

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.

6558098 MANITOBA LTD. 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. 15223/2 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

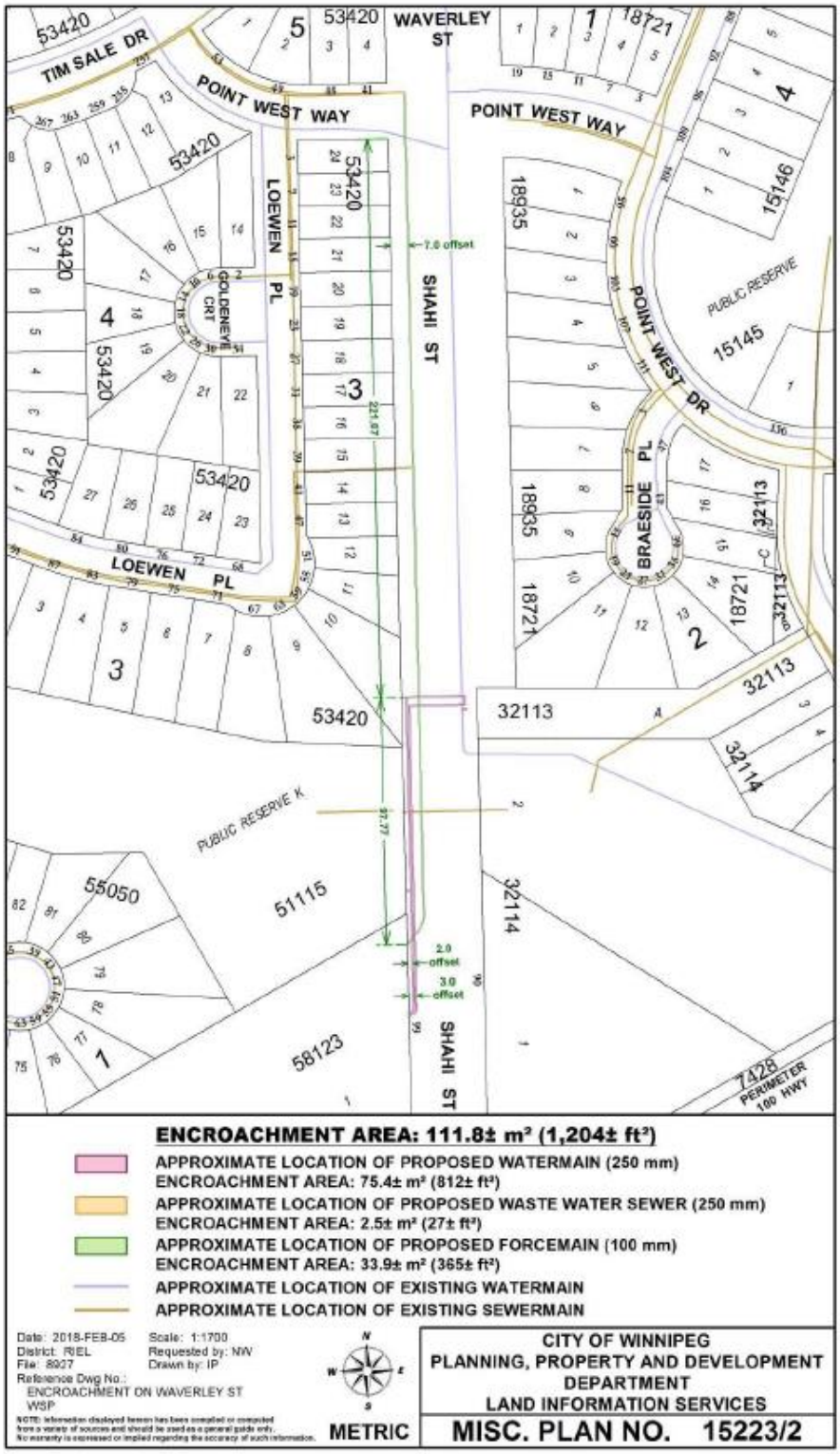
6558098 MANITOBA LTD.

Per: _____ 8th MAY 2018
DATE

BARJINDER S THIND
NAME

DIRECTOR
TITLE

I/We have been authorized to bind the Corporation


53420
TIM SALE DR
WAVERLEY ST
POINT WEST WAY
POINT WEST WAY
LOEWEN PL
SHAHI ST
7.0 offset
GOLDENEYE CRT
LOEWEN PL
BRAESIDE PL
POINT WEST DR
PUBLIC RESERVE
15145
15146
18935
18721
32113
32114
PUBLIC RESERVE K
51115
55050
58123
2.0 offset
3.0 offset
7428
PERIMETER 100 HWY
ENCROACHMENT AREA: 111.8± m² (1,204± ft²)
APPROXIMATE LOCATION OF PROPOSED WATERMAIN (250 mm)
ENCROACHMENT AREA: 75.4± m² (812± ft²)
APPROXIMATE LOCATION OF PROPOSED WASTE WATER SEWER (250 mm)
ENCROACHMENT AREA: 2.5± m² (27± ft²)
APPROXIMATE LOCATION OF PROPOSED FORCEMAIN (100 mm)
ENCROACHMENT AREA: 33.9± m² (365± ft²)
APPROXIMATE LOCATION OF EXISTING WATERMAIN
APPROXIMATE LOCATION OF EXISTING SEWERMAIN
Date: 2018-FEB-05
District: RIEL
File: 8927
Reference Dwg No.:
ENCROACHMENT ON WAVERLEY ST
WSP
Scale: 1:1700
Requested by: NW
Drawn by: IP
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 15223/2

SCHEDULE B

