Agenda – Executive Policy Committee – January 22, 2019

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 7, 2019

Item No. 29 Encroachment Agreement to Allow for Underground Private Water and Sewer Service Pipes within the Street Right of Way on the West Side of Brookside Boulevard, North of Inkster Boulevard

STANDING COMMITTEE RECOMMENDATION:

On January 7, 2019, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the proposed Terms and Conditions for an Encroachment Agreement, attached hereto as Schedule A, in favour of the Rural Municipality of Rosser to construct underground private water and sewer pipes within the street right of way to service the Rural Municipality of Rosser Industrial Park, be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with the Rural Municipality of Rosser 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 Encroachment 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.

Agenda – Executive Policy Committee – January 22, 2019

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – January 7, 2019

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On January 7, 2019, 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 for Underground Private Water and Sewer Service Pipes within the Street Right of Way on the West Side of Brookside Boulevard, North of Inkster 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	B. D'Avignon, Acting for M. Ruta	G. Chartier, Acting for D. McNeil

EXECUTIVE SUMMARY

The Public Service has negotiated the proposed Terms and Conditions of an Encroachment Agreement in favour of The Rural Municipality of Rosser (the "Licensee"). The Licensee intends to construct underground water and sewer pipes on the west side of Brookside Boulevard, north of Inkster Boulevard.

The Licensee will be responsible for all costs associated with the Encroachment Agreement for an encroachment and the Ward Councillor has been consulted.

RECOMMENDATIONS

1. That the proposed Terms and Conditions for an Encroachment Agreement, attached hereto as Schedule A, in favour of the Rural Municipality of Rosser to construct underground private water and sewer pipes within the street right of way to service the Rural Municipality of Rosser Industrial Park, be approved.

2. That the City enter into, execute and deliver an Encroachment Agreement with the Rural Municipality of Rosser 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 Encroachment 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

Clause 4(1)(d) of the Encroachment By-law No. 692/74 (the "By-law) 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."

In Section 2 of the By-law, Designated Officer is defined as "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".

The Public Service has negotiated Terms and Conditions of an Encroachment Agreement for an encroachment in favour of the Licensee.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no general, policy, regulatory, environmental, human resource, or other implications of this report.

There is an existing Wastewater Service Sharing Agreement between the City and the Licensee. The Encroachment Agreement is required in order for the Wastewater Service Sharing Agreement to be fully operational. The termination and default clauses in the Encroachment Agreement are the same as the Wastewater Service Sharing Agreement and the Encroachment Agreement shall terminate upon termination, cancellation or expiry of the Wastewater Service Sharing Agreement.

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

HISTORY/DISCUSSION

The northwest corner of Brookside Boulevard and Inkster Boulevard lies within the Rural Municipality of Rosser and is developed within an industrial park. The Licensee would like to begin constructing underground water and sewer pipes on the west side of Brookside Boulevard, north of Inkster Boulevard (identified on Schedule B & C) to facilitate further development within the industrial park. As a result, the Licensee requires private services within a right-of-way (an encroachment) in order to connect to the nearest municipal services. 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 Public Service has negotiated proposed Terms and Conditions of an Encroachment Agreement in favour of the Licensee. The Terms and Conditions were signed prior to 2019 and the rent for the Agreement is based upon the encroachment license annual rate noted in the

City of Winnipeg 2018 Fees and Charges Schedule. Effective January 1, 2019, the rent will decrease to $1,854.30 ($3.00 per square metre). The Public Service reviewed the encroachment portfolio in 2018 and recommended new rental rates in 2019 for different types of land uses which are representative of market value.

It is noted that the City of Winnipeg and the Rural Municipality of Rosser have an existing Wastewater Service Sharing Agreement. The Encroachment Agreement and Wastewater Service Sharing Agreement are related agreements; the Encroachment Agreement is required for the Wastewater Service Sharing Agreement to be fully operable, and the Encroachment Agreement is only effective so long as the Wastewater Service Sharing Agreement is effective. The termination and default clauses of the Encroachment Agreement and the Wastewater Service Sharing Agreement are the same and, if one terminates, the other will need to be terminated.

FINANCIAL IMPACT

Financial Impact Statement

Date: December 27, 2018

Project Name:

First Year of Program **2019**

Encroachment Agreement to Allow for Underground Private Water and Sewer Service Pipes within the Street Right of Way on the West Side of Brookside Boulevard, North of Inkster Boulevard

	2019	2020	2021	2022	2023
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	2,247	2,292	2,338	2,385	2,433
Net Cost/(Benefit)	$ (2,247)	$ (2,292)	$ (2,338)	$ (2,385)	$ (2,433)
Less: Existing Budget Amounts	(2,247)	(2,292)	(2,338)	(2,385)	(2,433)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenue in 2019 consists of the annual encroachment license fee of $1,854 + an annual admin fee of $393. These amounts reflect fees in effect as at January 1, 2019; being the 2018 fees as noted in Schedule A increased by the rate of inflation as approved by the Chief Financial Officer under delegated authority from Council. Revenues from 2020 onward have been increased by an assumed 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: Armohan Singh, Real Estate Officer
Date: December 28, 2018
File No: 7052/A

Attachments:

Schedule A – Proposed Terms and Conditions
Schedule B – Misc. Plan 15277
Schedule C – Misc. Plan 15273/1

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO ALLOW FOR CONSTRUCTION OF A 300 MM DIAMETER UNDERGROUND SEWER WATER MAIN, A 300 MM DIAMETER UNDERGROUND LOW-PRESSURE SEWER MAIN, AND A 600 MM DIAMETER UNDERGROUND WASTEWATER SEWER MAIN ON BROOKSIDE BOULEVARD, NORTH TO FARMER AVENUE.

Use:	1. Construct, install, maintain, repair, restore, replace and operate a 300 mm underground sewer water main, a 300 mm diameter underground sewer main, and a 600 mm diameter underground sewer main on Brookside Boulevard, North to Farmer Avenue (hereinafter collectively referred to as the "Licensee's Sewer Mains").
Licensor:	2. The City of Winnipeg (hereinafter called the "City")
Licensee:	3. The Rural Municipality of Rosser (hereinafter called the "Licensee");
Area:	4. The encroachment areas are as follows: a. The area of the 300 mm sewer main is identified as "Approximate location of proposed watermain (300 mm) - Encroachment Area: 163.1 ± m^2 (1,756 ± ft^2)" on Misc. Plan No. 15277 and "Approximate Location of Proposed Watermain (300 mm) - Encroachment Area: 256.1 ± m2 (2,757 ± ft^2)" on Misc. Plan No. 15273/1, attached hereto as Schedule "B" and Schedule "C" respectively; b. The area of the 300 mm low-pressure sewer main is identified as "Approximate location of proposed low-pressure sewer (300 mm) - Encroachment Area: 196.6 ± m^2 (2,116 ± ft^2)" on Misc. Plan No. 15273/1, attached hereto as Schedule "C"; and c. The area of the 600 mm wastewater sewer main is identified as "Approximate location of proposed wastewater sewer (600 mm) - Encroachment Area: 2.3 ± m^2 (25 ± ft^2)" on Misc. Plan No. 15273/1, attached hereto as Schedule "C"; (hereinafter collectively called the "Encroachment Area");
Term:	5. Annually continuing, commencing 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:	6. $15,823.36 per annum, plus GST, payable yearly in advance, 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:	7. Annual administrative fee of $386.00 plus GST;

Document Preparation Fee:

8. A one-time Legal Services Document Preparation Fee in the amount of $1,190.00 plus GST payable prior to the commencement date;

Taxes:

9. 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.

10. The Licensee shall be 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:

11. The Licensee shall obtain and keep in force (or cause its contractors to obtain and keep in force) during the full term of this Agreement, and any extension thereof, the following insurance coverage:

    a. Wrap up liability insurance in the amount of at least ten million dollars ($10,000,000) per occurrence for bodily injury, property damage and sudden and accidental pollution liability with 120 hours reporting for the accidental escape of pollutants. Such liability policy to include the City of Winnipeg, Manitoba Hydro, and Centra Gas Manitoba as additional insureds and contain evidence of contractual liability, cross liability clause, owners and contractors protective liability, unlicensed motor vehicle liability, non-owned automobile liability, and products and completed operations liability including twelve (12) months completed operations after completion;

    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 dollars ($5,000,000.00) inclusive for loss or damage including personal injuries and death resulting from any one accident or occurrence; and

    c. Environmental impairment liability insurance in an amount not less than five million dollars ($5,000,000.00) per claim and five million dollars ($5,000,000.00) in the aggregate including clean-up costs.

12. The Licensee shall provide and/or ensure that their Contractor provides evidence that workers compensation is in place in accordance with provincial legislation during the term of this agreement.

13. All policies to be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

14. Deductibles shall be borne by the Licensee;

15. 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;

16. The Licensee shall file with the City a certificate(s) of insurance in a form satisfactory to the City's Supervisor of Insurance at least seven (7) business days prior to the commencement of any construction;

17. 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 lease agreement and any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change.

Third Party Approvals:

18. In the event that third party approval, order, license, or decision is required for any of the transactions and matters contemplated herein, the Licensee shall obtain such third party approval (including, without limitation, regulatory approvals), order, license or decision at its sole expense.

19. In the event that any third party approval, order, license or decision is made which imposes orders, directions, terms, instructions, or conditions that frustrate or materially amend or change any of the terms, conditions and agreements contained in this Agreement or the Service Sharing Agreement, the City at its sole option shall have the right, upon notice to the Licensee, to terminate this Agreement in accordance with clause 25.

Default

20. The Licensee shall be deemed to be in breach of and in default under this Agreement if at any time:
    a. The Licensee becomes, or is about to become, bankrupt or insolvent, goes into receivership or takes the benefit of any statute from time to time in force relating to bankrupt or insolvent debtors;
    b. An order is made or resolution is passed for the dissolution or winding-up of the Licensee;
    c. The Licensee or its officers, employees, contractors or agents knowingly make false statements or entries in any invoices, documents or records required to be presented, kept, maintained or provided under this Agreement or the Service Sharing Agreement;
    d. Any representation or warranty made by the Licensee is false or misleading in any material respect;
    e. The City is reasonably of the opinion that the Licensee has failed to comply with any of its obligations or undertakings under this Agreement or the Service Sharing Agreement.

21. The Licensee shall give to the City prompt notice of the occurrence of any event which constitutes or may, with the passage of time, constitute a breach or default under this Agreement.

22. If the Licensee is in breach of this Agreement or in default pursuant to the above clauses 20(a) or 20(b), the City shall be entitled to demand in writing that the Licensee promptly pay any amount due and payable under this Agreement and terminate this Agreement in accordance with clause 25.

23. If the Licensee is in breach of this Agreement or in default pursuant to clauses 20(c) or 20(d) above, the Licensee may refer the matter to the dispute resolution process set forth in clauses 29, 30 and 31 within thirty (30) days of receipt of notice from the City of the breach or default. If such referral is not made by the Licensee or it is determined through the dispute resolution process that a breach or default has occurred pursuant to clauses 20(c) or 20(d) as the case may be, the City shall be entitled to demand in writing that the Licensee promptly pay any amount due and payable under this Agreement and terminate this Agreement in accordance with clause 25.

24. If the Licensee is in breach of this Agreement or in default pursuant to clause 20(e) above, the City shall:
    a. Within thirty (30) days of the City becoming aware of the breach or default provide a written notice to the Licensee clearly identifying the breach and requesting that the Licensee take action to correct the breach;
    b. If within thirty (30) days of receipt of said notice the Licensee has corrected the breach or default or has commenced and diligently pursued corrections in accordance with a schedule accepted by the City, such breach or default shall be deemed to be corrected and the City may not terminate this Agreement;
    c. Subject to clause 24(d), if within thirty (30) days of receipt of said notice the Licensee has not corrected the breach or default or has failed to commence and diligently pursue corrections in accordance with a schedule accepted by the City, the City may terminate this Agreement in accordance with clause 25 by notice in writing to the Licensee within fifteen (15) days following the last day of such thirty (30) day period;
    d. In the event the Licensee disputes that a breach or default has occurred pursuant to clause 20(e) the Licensee may within thirty (30) days of receipt of said notice refer the matter to the dispute resolution process in clauses 29, 30 and 31. If it is determined through the dispute resolution process that a breach or default has occurred pursuant to clause 20(e), then:
        i. If within thirty (30) days of such determination the Licensee has corrected the breach or default or has commenced and diligently pursued corrections in accordance with a schedule accepted by the City, such breach or default shall be deemed to be corrected and the City may not terminate this Agreement; and
        ii. If within thirty (30) days of such determination the Licensee has not corrected the breach or default or has failed to commence and diligently pursue corrections in accordance with a schedule accepted by the City, the City may terminate the Agreement in accordance with clause 25 by notice in writing to the Licensee within fifteen (15) days following the last day of such thirty (30) day period.

Cancellation:

25. In the event that the City elects to terminate this Agreement pursuant to 19, 22, 23, 24(c) or 24(d)(ii):
    a. If such termination occurs prior to the provision of Wastewater Services by the City to the Licensee, the Agreement shall be terminated immediately upon receipt of notice of termination provided by the City to the Licensee; or
    b. If such termination occurs following the commencement of the provision of Wastewater Services by the City to the Licensee, the Licensee shall diligently and in good faith seek alternate sources for the provision of wastewater services to the Licensee and this Agreement shall be terminated on the date that falls three (3) years following the receipt of notice of termination provided by the City to the Licensee.

    Any such termination under this clause 25 shall be without liability to the City and the Licensee indemnifies and saves harmless all members of City Council, all members of any board or committee of the City, the City and its employees and agents and any person acting under the instructions of City Council or an employee or agent of the City from any and all damages in respect thereto.

26. Notwithstanding anything to the contrary in this Agreement, this Agreement will terminate upon termination, cancellation or expiry of the Service Sharing Agreement.

27. In the event of termination, cancellation or expiration of this 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;

28. 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;

Dispute Resolution:

29. The Parties agree to use best efforts to resolve potential disputes in good faith and reasonably.

30. At the written request of either party, the City's Director of Water and Waste and the Chief Administrative Officer of the Licensee will meet with a view to amicably resolving any dispute with respect to any matter in this Agreement, the interpretation thereof, or the performance of the Parties. If the Director and the Chief Administrative Officer of the Licensee cannot agree on a resolution within thirty (30) days, the dispute will be referred to the Chief Administrative Officer of the City and the Chief Administrative Officer of the Licensee ("Referral to the CAOs") who will work together to resolve the dispute.

31. If the Chief Administrative Officer of the City and the Chief Administrative Officer of the Licensee cannot agree on a resolution to the dispute within thirty (30) days of Referral to the CAOs then, at any time thereafter, the Licensee or the City may issue a notice of arbitration to the other. The notice of arbitration shall set out a description of the dispute and the full name and contact information of a sole arbitrator proposed by the party giving notice (the "First Party"). If the party receiving the notice (the "Second Party") agrees to the arbitrator proposed by the First Party, then such arbitrator shall proceed to hear the dispute and the decision of said arbitrator shall be final and binding on the parties. If the Second Party does not agree to the arbitrator proposed by the First Party, the Second Party shall, within fifteen (15) days of receiving the notice of arbitration, give notice to the First Party, which notice shall include the full name and contact information of the arbitrator proposed by the Second Party. The First Party shall, within ten (10) days of receipt of such notice, advise the Second Party as to whether it agrees with the arbitrator proposed by the Second Party. If not, the parties shall, in good faith and within fifteen (15) days, try to find an arbitrator mutually acceptable to them, failing which either party may apply to the Court of Queen's Bench of Manitoba to have a sole arbitrator appointed in accordance with *The Arbitration Act* (Manitoba). All such arbitrations shall be carried out in accordance with the provisions of *The Arbitration Act* (Manitoba). All costs with respect to any arbitration shall be borne equally between the parties.

Conditions:

32. 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;

33. The Licensee acknowledges and agrees the Encroachment Area is located within a right-of-way and is governed by The City of Winnipeg Encroachment By-law No. 692/74;

34. The Licensee understands and agrees that the Encroachment Area is licensed on an "as is" basis.

35. 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.

36. The Licensee shall ensure that no other sewer connections are hooked up and connected to the Licensee's Sewer Mains between the Licensees's lift station and the City's manhole to which the Licensee's sewer is connecting.

37. The Licensee shall construct, install, maintain, repair, restore, replace and/or operate the Licensee's Sewer Mains in accordance with applicable City standards acceptable to the City's Director of Water and Waste including, without limitation, the City's Standard Construction Specifications and Development Design Guidelines as amended from time to time and in accordance with the Sewer By-law No. 92/2010 and all other applicable laws.

38. 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.

39. That the Licensee shall, at its sole cost and expense and at all times maintain, keep and service in good repair the Licensee's Sewer Mains. "Maintain, keep and service in good repair" shall be deemed to include, without limitation, the obligation to repair, restore or replace where damage or destruction has occurred due to any reason.

40. The City reserves the right for Bell MTS Inc., 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.

41. 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.

42. 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.

43. 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. Any consent by the City to an assignment shall not relieve the Licensee of its obligation for the payment of rents hereby reserved and the performance of the terms and conditions herein contained.

44. 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.

45. 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.

46. Subject to obtaining the prior written approval of the Director, all improvements, development and construction within 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 plans for construction within the Encroachment Area must be submitted to the City's Underground Structures Branch for review and approval prior to any construction;

47. 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;

48. The Licensee agrees to contact the "Call Before You Dig" line at 204-480-1212 or "Click Before You Dig Manitoba" website at http://www.clickbeforeyoudigmb.com to ensure that locates are performed prior to any construction on the Encroachment Area.

49. In the event that the Encroachment Area 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 Encroachment Area and conduct the repairs at the sole cost and expense of the Licensee;

50. 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, labor, services or materials supplied or claimed to have been supplied to the Licensee.

51. The Licensee 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

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

53. 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;

54. That snow removal on the Encroachment Area shall be the responsibility of the Licensee;

55. Notwithstanding anything to the contrary contained in this Agreement, if either party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of a force majeure event, including, but not limited to: strikes; walkouts; labour troubles; industrial disturbances; inability to procure materials or services; failures, fluctuations or non-availability of electric power, heat, light, ventilation or air-conditioning; governmental laws, regulations or controls; riots; civil commotions; insurrections; sabotage; terrorism; invasion; rebellion; military or usurped power; war or warlike operations; blockades; epidemics; washouts; nuclear and radiation activity or fallout; explosions; natural disasters; acts of God; or other reason whether of a similar nature or not which is not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such term, covenant or act shall be excused for the period of the delay and the party so delayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the period of such delay. The provisions of this section shall not operate to excuse Licensee from the payment of Fees in the amounts and at the times specified in this Agreement nor shall they apply so as to extend the period of time for the Licensee to complete Licensee's work or to extend the fixturing period, if any, nor shall they entitle the Licensee to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

Manitoba Hydro/Centra Gas Advisories:

56. The Licensee acknowledges and agrees that it has taken notice of the advisories provided by Manitoba Hydro and/or Centra Gas Manitoba Inc. as found attached at Schedule "D".

Water and Waste Department Advisories:

57. The City's Water and Waste Department advises of the following:
    a. The City will not be responsible for maintaining the proposed hydrants to be located within City limits and in the Encroachment Area. The proposed hydrants will be owned, operated, and maintained by the Cartier Regional Water Co-Operative.

Other:

58. 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.

59. 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.

THE RURAL MUNICIPALITY OF ROSSER HEREBY AGREES TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS: (A) "Approximate location of proposed watermain (300 mm) - Encroachment Area: 163.1 ± m² (1,756 ± ft²)" ON MISC. PLAN NO. 15277 AND "Approximate Location of Proposed Watermain (300 mm) - Encroachment Area: 256.1 ± m² (2,757 ± ft²)" ON MISC. PLAN NO. 15273/1, ATTACHED HERETO AS SCHEDULE "B" AND SCHEDULE "C" RESPECTIVELY; (B) "Approximate location of proposed low-pressure sewer (300 mm) - Encroachment Area: 196.6 ± m2 (2,116 ± ft²)" ON MISC. PLAN NO. 15273/1, ATTACHED HERETO AS SCHEDULE "C"; AND (C) "Approximate location of proposed wastewater sewer (600 mm) - Encroachment Area: 2.3 ± m² (25 ± ft²)" ON MISC. PLAN NO. 15273/1, ATTACHED HERETO AS SCHEDULE "C"; AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

THE RURAL MINICIPALITY OF ROSSER

Per: _____ Dec 21/18
DATE

LARRY WANDOWICH
NAME

CHIEF ADMINISTRATIVE OFFICER
TITLE

I/We have been authorized to bind the Corporation

Please provide the following Licensee contact information:

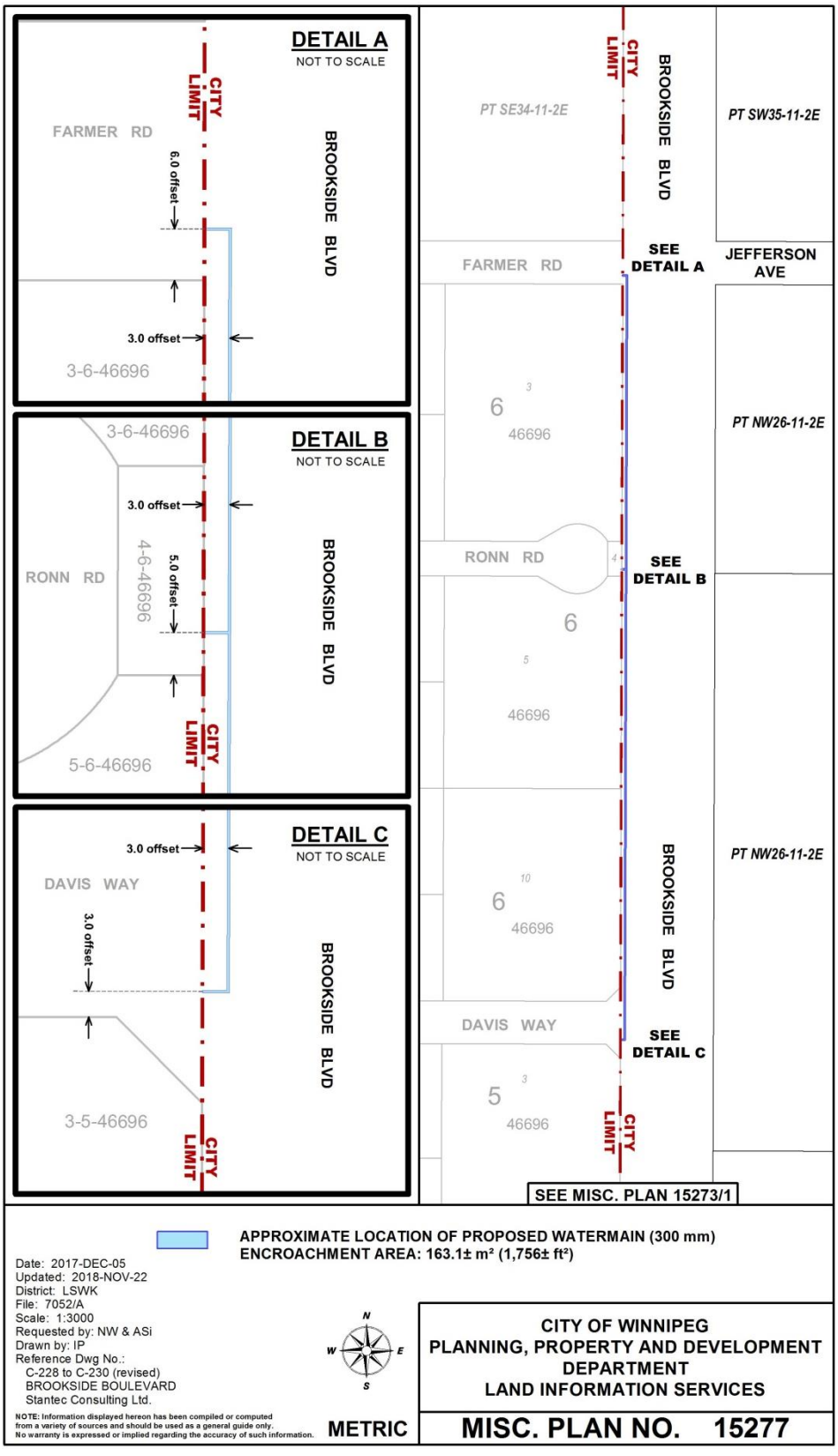
Contact Person: LARRY WANDOWICH

Daytime: 8:30 - 4:30 p.m. Phone No.: 204-467-5711

After Hours: _____ Phone No.: 204-390-0636

E-mail Address: cao@rmofrosser.com

Schedule B


DETAIL A
NOT TO SCALE
CITY LIMIT
FARMER RD
6.0 offset
BROOKSIDE BLVD
3.0 offset
3-6-46696
DETAIL B
NOT TO SCALE
3-6-46696
3.0 offset
RONN RD
4-6-46696
5.0 offset
BROOKSIDE BLVD
CITY LIMIT
5-6-46696
DETAIL C
NOT TO SCALE
3.0 offset
DAVIS WAY
3.0 offset
BROOKSIDE BLVD
3-5-46696
CITY LIMIT
PT SE34-11-2E
CITY LIMIT
BROOKSIDE BLVD
PT SW35-11-2E
FARMER RD
SEE DETAIL A
JEFFERSON AVE
6
3
46696
PT NW26-11-2E
RONN RD
SEE DETAIL B
6
5
46696
6
10
46696
BROOKSIDE BLVD
PT NW26-11-2E
DAVIS WAY
SEE DETAIL C
5
3
46696
CITY LIMIT
SEE MISC. PLAN 15273/1
APPROXIMATE LOCATION OF PROPOSED WATERMAIN (300 mm)
ENCROACHMENT AREA: 163.1± m² (1,756± ft²)
Date: 2017-DEC-05
Updated: 2018-NOV-22
District: LSWK
File: 7052/A
Scale: 1:3000
Requested by: NW & ASi
Drawn by: IP
Reference Dwg No.:
C-228 to C-230 (revised)
BROOKSIDE BOULEVARD
Stantec Consulting Ltd.
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.
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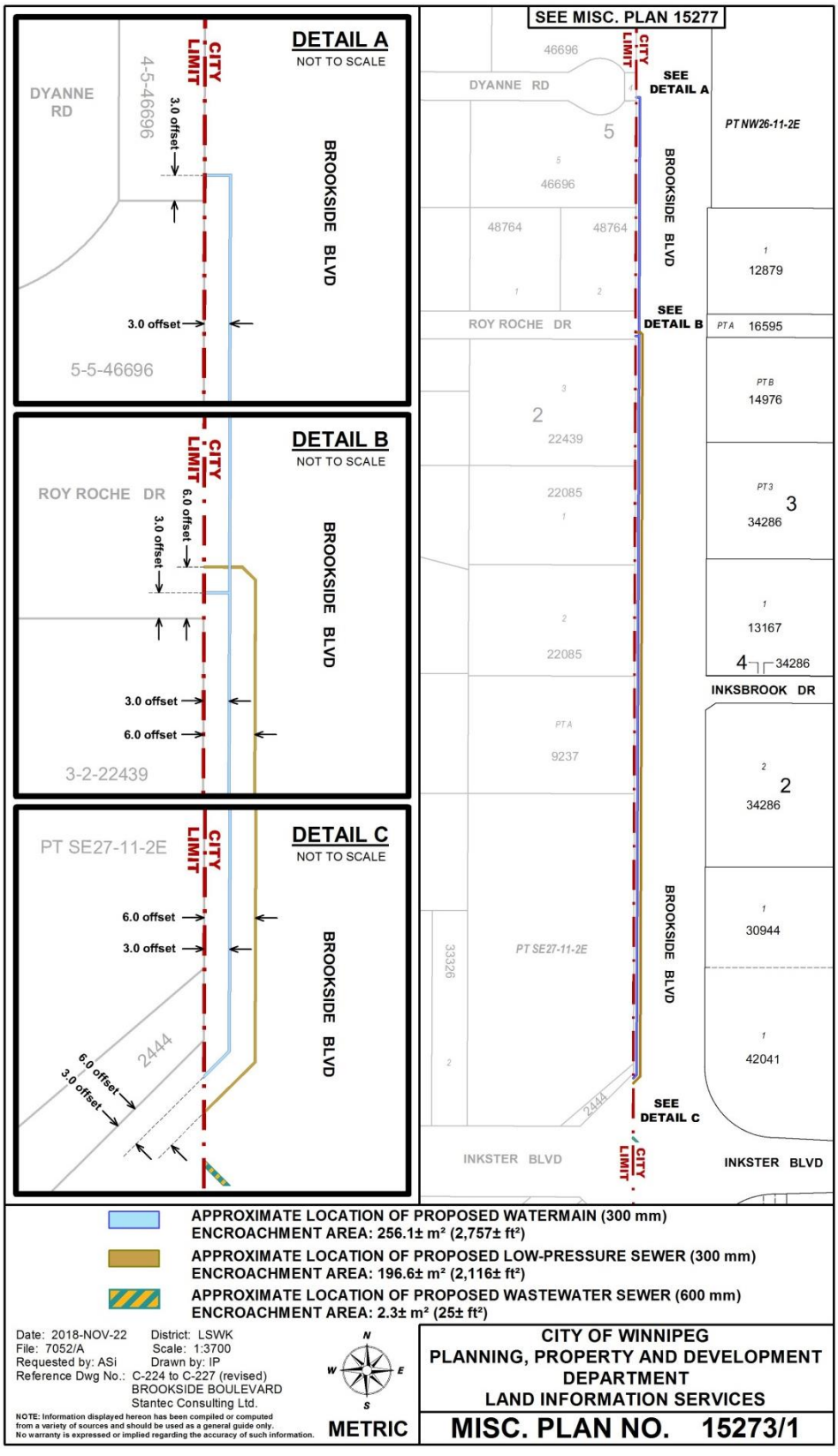
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 15277

Schedule C


DETAIL A
NOT TO SCALE
DYANNE RD
4-5-46696
CITY LIMIT
3.0 offset
BROOKSIDE BLVD
3.0 offset
5-5-46696
DETAIL B
NOT TO SCALE
ROY ROCHE DR
CITY LIMIT
6.0 offset
3.0 offset
BROOKSIDE BLVD
3.0 offset
6.0 offset
3-2-22439
DETAIL C
NOT TO SCALE
PT SE27-11-2E
CITY LIMIT
6.0 offset
3.0 offset
BROOKSIDE BLVD
2444
6.0 offset
3.0 offset
SEE MISC. PLAN 15277
46696
CITY LIMIT
DYANNE RD
SEE DETAIL A
PT NW26-11-2E
5
46696
BROOKSIDE BLVD
48764
48764
12879
SEE DETAIL B
ROY ROCHE DR
PT A
16595
PT B
14976
2
22439
22085
PT 3
3
34286
13167
22085
4
34286
INKSBROOK DR
PT A
9237
2
34286
2
30944
PT SE27-11-2E
33326
BROOKSIDE BLVD
42041
2444
SEE DETAIL C
INKSTER BLVD
CITY LIMIT
INKSTER BLVD
APPROXIMATE LOCATION OF PROPOSED WATERMAIN (300 mm)
ENCROACHMENT AREA: 256.1± m² (2,757± ft²)
APPROXIMATE LOCATION OF PROPOSED LOW-PRESSURE SEWER (300 mm)
ENCROACHMENT AREA: 196.6± m² (2,116± ft²)
APPROXIMATE LOCATION OF PROPOSED WASTEWATER SEWER (600 mm)
ENCROACHMENT AREA: 2.3± m² (25± ft²)
Date: 2018-NOV-22
File: 7052/A
Requested by: ASi
Reference Dwg No.: C-224 to C-227 (revised)
BROOKSIDE BOULEVARD
Stantec Consulting Ltd.
District: LSWK
Scale: 1:3700
Drawn by: IP
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.
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METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 15273/1