Minute No. 455
Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – June 24, 2019

Item No. 8 Permanent Easement in favour of The Red River Exhibition Association within Bernadine Park located at 10 Stradford Street (St. James 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, subject to approval of two-thirds of all Council members (pursuant to Subsection 205(2) of the City of Winnipeg Charter Act), the City grant a permanent easement to The Red River Exhibition Association, identified as "Private Watermain Easement Area" as shown on Misc. Plan No. 15454/1, (attached as Schedule B) in accordance with the terms attached in Schedule A.

2. That, subject to the approval of Recommendation 1, the City enter into, execute and deliver an easement agreement with The Red River Exhibition Association, and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

3. That authority be delegated to the Director of Planning, Property and Development to negotiate and approve the terms and conditions of the Easement 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 24, 2019

DECISION MAKING HISTORY:

Moved by Councillor Mayes,

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 July 9, 2019, 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 24, 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: Proposed Permanent Easement in favour of The Red River Exhibition Association within Bernadine Park located at 10 Stradford Street

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	P. Olafson, Interim CFO	M. Ruta, Interim CAO

EXECUTIVE SUMMARY

The proposed easement will allow the Red River Exhibition Association ("RREX") to construct a 300mm private water main within the City-owned parkland at 10 Stradford Street, for the purposes of providing water servicing to the RREX lands immediately west of the Perimeter Highway.

The Ward Councillor was consulted and concurs with the Public Service recommendation.

RECOMMENDATIONS

1. That, subject to approval of two-thirds of all Council members (pursuant to Subsection 205(2) of the City of Winnipeg Charter Act), the City grant a permanent easement to The Red River Exhibition Association, identified as “Private Watermain Easement Area” as shown on Misc. Plan No. 15454/1, (attached as Schedule B) in accordance with the terms attached in Schedule A.

2. That, subject to the approval of Recommendation 1, the City enter into, execute and deliver an easement agreement with The Red River Exhibition Association, and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the “Ancillary Agreements”).

3. That authority be delegated to the Director of Planning, Property and Development to negotiate and approve the terms and conditions of the Easement 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

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 two-thirds of all members of Council. The Subject City-owned Property is zoned “PR1-Parks and Recreation” and 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

There are no regulatory, environmental, operational, human resources, or other implications associated with this report.

The proposed easement will place limitations on the City’s rights within the City-owned Property (e.g. City cannot build a permanent structure on the easement area).

The net proceeds of the one-time fee outlined in Schedule A will be deposited in the Land Dedication Reserve.

HISTORY/DISCUSSION

RREX intends to commence construction on a new retail centre (Westport Festival) and business park on their lands located at 3977/4055 Portage Avenue. In order to facilitate the development, a new water line to the RREX property is required.

On August 29, 2018, the engineering consultant for RREX requested a permanent easement from the City through Bernadine Park. The easement will allow for the installation of a 300mm private water main through the Bernadine Park to the RREX property on the west side of the Perimeter Highway. Bernadine Park is located at 10 Stradford Street in the Buchanan Neighbourhood and is identified as “City-owned Property” on Misc. Plan No. 15454/1 (attached as Schedule B).

The RREX request was circulated to City Departments and utilities and no objections were received regarding the proposed easement. Parks identified an initial concern regarding the width of the easement, but the engineering consultant for RREX provided a satisfactory explanation to Parks and the width was maintained.

It is noted that the Public Service requested a seven day circulation period from the utilities, which is less than the 14 day period recommended by the Real Estate Transaction Management Framework. However, it is important to note that all circulated utilities responded within the seven day timeframe.

The Public Service recommends that Council approve the permanent easement and that authority be delegated to the Director of Planning, Property and Development to finalize the terms and conditions outlined in Schedule A. RREX will be required to install, maintain and repair the water main within the easement area, at their cost. No buildings or permanent structures will be permitted in the easement area.

The Public Service recommends that RREX be required to pay the one-time sum of $9,300.00 for the permanent easement. This amount was determined by an internal appraisal report and the report included a highest and best use of “greenspace” recognizing the easement is a subsurface land use.

If Council concurs in the recommendation of the Public Service, the easement will take effect one month after the date of approval – approximately August 2019.

The Ward Councillor was consulted and concurs with the proposed easement.

FINANCIAL IMPACT

Financial Impact Statement

Date: May 23, 2019

Project Name:

Proposed Grant of Permanent Easement Agreement in Favour of The Red River Exhibition Association

First Year of Program 2019

	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	9,300	-	-	-	-
Net Cost/(Benefit)	$ (9,300)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(9,300)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenue represents the one-time fee for the right of easement. **No budget adjustment is required.**

"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)
Water and Waste Department
Public Works Department

OURWINNIPEG POLICY ALIGNMENT

Not applicable

SUBMITTED BY

Department: Planning, Property and Development
Division: Real Estate and Land Development
Prepared by: Clifford Bignall, Real Estate Officer
Date: May 23, 2019
File No:

Attachments:

Schedule A – Terms and Conditions
Schedule B – Misc. Plan 15454/1

Schedule "A"

Proposed Terms and Conditions for Easement Agreement on City Owned Property, Shown as "Private Watermain Easement Area" On Attached Misc. Plan No. 15454/1

Grantor:	The City of Winnipeg (hereinafter referred to as the "City").
Grantee:	The Red River Exhibition Association (hereinafter referred to as the "Grantee").
Term:	In perpetuity, commencing the first day of the month following approval from the City's Council.
Fee:	One-time fee of NINE THOUSAND THREE HUNDRED DOLLARS ($9,300.00) plus GST for the right of easement.
Easement Area:	That portion of City-owned land shown outlined, hatched and identified as "PRIVATE WATERMAIN EASEMENT AREA" on Misc. Plan No. 15454/1, 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 the 300mm private water main (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 property to its original state. If the Easement Agreement is terminated, the Grantee shall also undertake to discharge the caveat to be registered against title to the Easement Area.
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 private water main 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 $9,300.00 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. 15454/1, 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. 15454/1, 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 *Manager of Parks and Open Space Division* 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 *Manager of Parks and Open Space Division*.

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 the property commonly referred to as **3975 PORTAGE AVE** and legally described as follows:

   ALL THOSE PORTIONS OF RL 90 AND 91 AND THE WLY 176.88 FEET OF RL 92 PARISH OF ST CHARLES WHICH LIE NORTH OF THE NORTHERN LIMIT OF MAIN HIGHWAY PLAN 547 WLTO EXC ALL THOSE PORTIONS WHICH LIE TO THE NORTH OF A LINE DRAWN SOUTH OF PARALLEL WITH AND PERP DISTANT 16.5 FEET FROM THE NORTHERN LIMITS OF SAID LOTS AND EXC OUT OF SAID LOTS 91 AND 92: PLAN 36781 WLTO AND EXC OUT OF SAID LOTS 90 AND 91: PLANS 57742 AND 61439 WLTO

   (hereinafter referred to as the "Grantee Land")

9. The Grantee will not transfer or convey the Grantee Land 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.

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 in respect of the Easement Agreement against the title of the Grantee Land and Easement Area. If the caveat is discharged, struck out, vacated or disposed of for any reason, the Easement Agreement shall be deemed to have been breached.

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

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

15. The Grantee shall comply with all laws, by-laws and regulations of any federal, provincial or municipal or other applicable authority.

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 by the City's Council, or pursuant to powers delegated by Council,, and are not binding until such time as that approval is obtained.

I/We, Garth Rogerson, being duly

(Please print)

Authorized to act on behalf of **The Red River Exhibition** hereby agrees to enter into an easement agreement with the City of Winnipeg for the use of the City-owned lands identified as "PRIVATE WATERMAIN EASEMENT AREA" on Misc. Plan No. 15454/1, in accordance with the proposed terms and conditions as outlined herein in Schedule "A".

The Red River Exhibition Association

Per: _____

_____

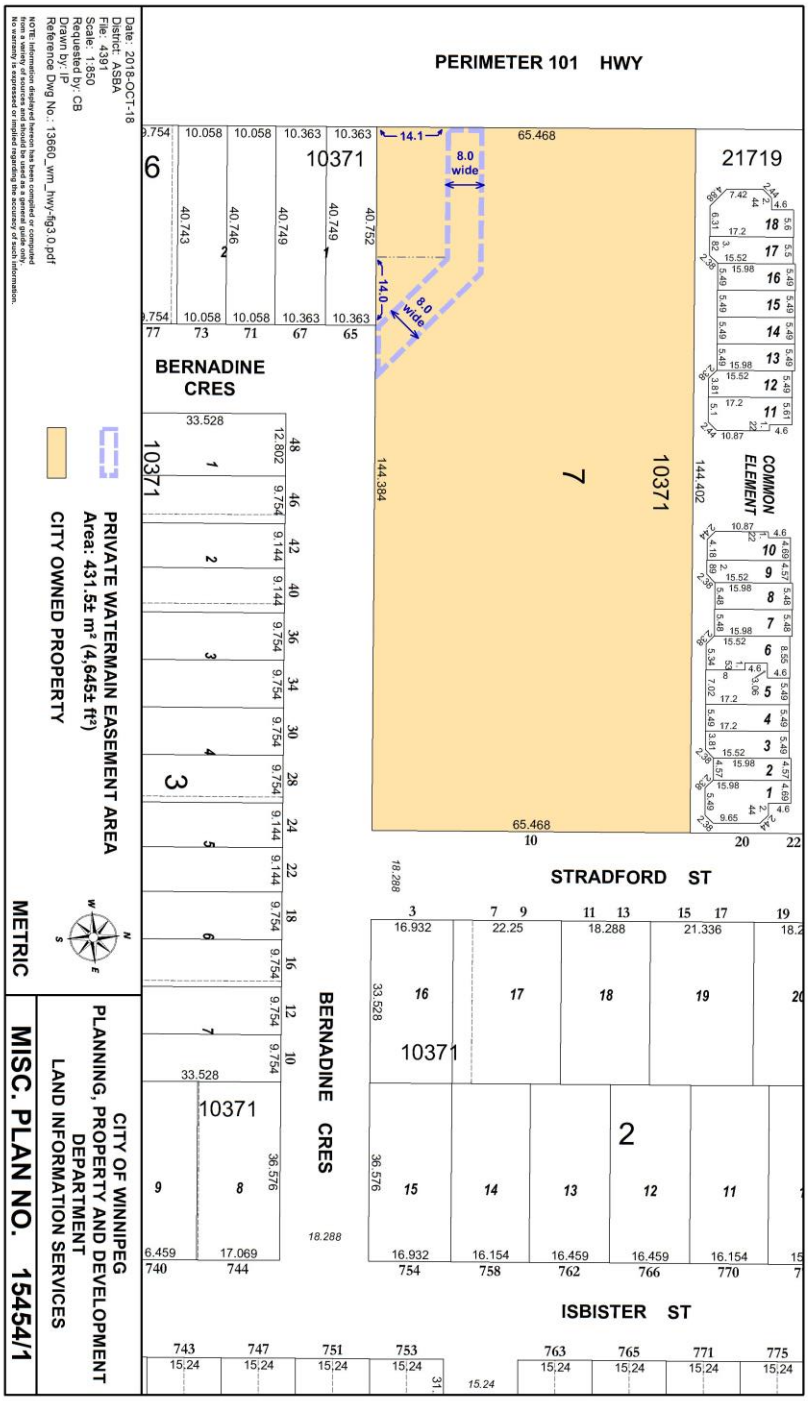
I have authority to bind the Grantee

Name: Garth Rogerson

Title: CEO

Date: March 18/19

SCHEDULE B


PERIMETER 101 HWY
BERNADINE CRES
STRADFORD ST
ISBISTER ST
COMMON ELEMENT
PRIVATE WATERMAIN EASEMENT AREA
Area: 431.5± m² (4,645± ft²)
CITY OWNED PROPERTY
METRIC
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT
DEPARTMENT
LAND INFORMATION SERVICES
MISC. PLAN NO. 15454/1