

A by-law of The Town of Carman to confirm and ratify an agreement respecting the construction and maintenance of sewer and water lines on lands owned by Her Majesty The Queen, in right of the Province of Manitoba, represented by the Minister of Public Works for the Province of Manitoba.

WHEREAS, pursuant to the provisions of clause (e) of subsection (1) of section 3 of The Municipal Act, being Chapter 173 of The Revised Statutes of Manitoba, 1954, and amendments thereto, every municipal corporation shall have all the rights and be subject to all the liabilities of a corporation, and it shall be capable of becoming party to any contracts or agreements in the management of its affairs;

AND WHEREAS, pursuant to the provisions of section 289 of the said The Municipal Act, the powers of every municipal corporation shall be exercised by the council thereof;

AND WHEREAS an agreement dated the tenth day of September, A.D. 1964, has been duly made by The Town of Carman respecting the construction and maintenance of sewer and water lines on lands owned by Her Majesty The Queen in right of the Province of Manitoba, represented by the Minister of Public Works for the Province of Manitoba;

AND WHEREAS it is deemed necessary and expedient to ratify and confirm the said agreement in the form as set out in Schedule "A" hereto attached;

NOW THEREFORE, the council of The Town of Carman, in regular session assembled, enacts as follows:

(1) THAT a certain agreement, in the form as set out in Schedule "A" hereto attached, duly made by the Corporation of The Town of Carman respecting the construction and maintenance of sewer and water lines on lands owned by Her Majesty The Queen in right of the Province of Manitoba, represented therein by the Minister of Public Works for the Province of Manitoba of the First Part, and The Town of Carman of the Second Part, be and the same is hereby ratified and confirmed.

DONE AND PASSED, in regular session assembled, this tenth day of September, A.D. 1964.

L. R. Spelton

Mayor

(seal)

A. L. Loopy

Secretary-Treasurer

THIS AGREEMENT made in duplicate this Fifth day of August, A. D., 1964.

BETWEEN:

HER MAJESTY THE QUEEN, in the right of the Province of Manitoba, represented herein by the Minister of Public Works for the Province of Manitoba,

hereinafter called "the LICENSOR", of the FIRST PART,

- and -

TOWN OF CARMAN

hereinafter called "the LICENSEE", of the SECOND PART.

WHEREAS the Licensor is the owner of all those lands and premises presently known as Provincial Trunk Highway No. 3.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants herein contained the parties hereto covenant each with the other as follows:

1. The Licensee may construct and maintain during the continuance of this Agreement a sanitary sewer line and a water line upon and under lands, all being more particularly described as follows:

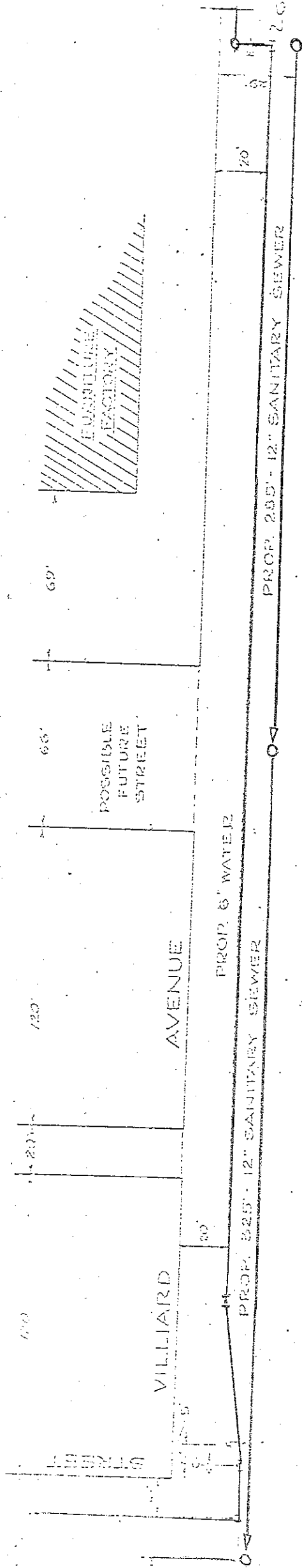
That portion of a highway presently known as Provincial Trunk Highway No. 3, between two lines drawn perpendicularly across said highway parallel to north of and distant respectively 30 and 650 feet from the projection easterly across said highway of the southern boundary of the right-of-way of a street presently known as Dufferin Street,

all being in the Town of Carman, said lands being shewn on a portion of a Drawing Numbered 22 064 001, prepared by Underwood, McLellan and Associates Limited, a portion of the said drawing being part and parcel and numbered Page 3 of the Agreement.

2. The Licensee shall not use the lands described above for any purpose other than the construction and maintenance of the said sanitary sewer line and a water line except as otherwise agreed to in writing.
3. The Licensee shall, in exercising all of its rights and privileges hereunder:
 - (a) use every possible precaution to ensure the efficient and safe movement of both vehicular and pedestrian traffic.
 - (b) refrain from constructing open trenches within ten feet (10') of the existing highway pavement without the permission of the Director of Operations,
 - (c) ensure that the tunnel and all excavation within the highway embankment shall be backfilled with granular material and,
 - (d) ensure that the material used for backfilling shall be thoroughly compacted and the surface over the excavated areas shall be maintained until such time as, in the opinion of the Licensor, all settlement has taken place and the surface thereof made good,
 - (e) adequately shore all open trenches within the limits of the said highway right-of-way,

- (f) leave the shoring intact in the tunnel where tunnelling is carried out under the said highway,
 - (g) use due care and attention to avoid injury or damage to the property of the Licensor and in the event that any such property is injured or damaged the Licensee shall forthwith restore the same to a condition satisfactory to the Licensor.
4. The Licensee shall ensure that all surfaces be restored to a condition similar in nature and equally as good as had existed prior to the commencement of construction.
 5. The licensee shall indemnify and save harmless the Licensor from and against all manner of action, liability or other monetary loss or claim which may arise directly or indirectly from the performance or exercise by the Licensee, its servants or agents, of its rights and privileges hereunder.
 6. The Licensee shall release the Licensor from any and all liability with respect to damage that the Licensor, its agents or assigns, may do, whether by negligence or otherwise, to the said sewer line and water line or other property of the Licensee by reason of the Licensor carrying out construction, maintenance or other work upon the lands described above at any time.
 7. This Agreement may be terminated in any one of the following ways:
 - (a) by the mutual consent of the parties,
 - (b) immediately upon the Licensee making a breach of any of its covenants hereunder,
 - (c) at the end of one month after the Licensee has ceased to use the said sewer line and water line,
 - (d) one month after the Licensor has given notice in writing to the Licensee of the termination of this Agreement.
 8. In the event that the Agreement be terminated the Licensee shall upon notice in writing from the Deputy Minister of Public Works remove said sewer line and water line at its own expense and should it fail to do so within such time as the notice may stipulate the Licensor may remove said sewer line and water line and the Licensee will pay to the Licensor the full cost thereof upon demand.
 9. Should for any reason whatever the said sewer line and water line be removed and relocated with the consent of the Licensor the Licensee covenants and agrees to pay the full costs of removing and relocating said sewer line and water line.
 10. The Licensee shall give notice in writing to the District Engineer, Highways Branch, at least forty-eight (48) hours prior to the commencement of construction.
 11. The Licensee covenants and agrees that any notices required to be given to it pursuant to this Agreement shall be effectively given if it is in writing, and given by registered mail addressed to the Licensee.

This is page 3 of Schedule "A" to By-Law No. 972 of The Town of Carman.



PROVINCIAL TRUNK HIGHWAY NO. 3

TOWN OF CARMAN

PROPOSED SANITARY SEWER EXTENSION

VILLIARD AVENUE
NORTH OF DUFFERIN STREET

DRAWN BY: R.C.L.	UNDERWOOD McLELLAN & ASSOCIATES LIMITED CONSULTING PROFESSIONAL ENGINEERS CALGARY REGINA SASKATOON WINNIPEG	APPROVED BY: <i>A.S. [Signature]</i> DATE: APR. 27/64
TRACED BY:		
CHECKED BY:		
DESIGNED BY: G.T.		
PLACED BY:	SHEET 1 OF 1	

SCALE: 1" = 50' DWG NO. 22 064 001

This is Page 4 of Schedule "A" to By-Law No. 972 of The Town of Carman.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first above written.

TOWN OF CARMAN

L. B. Skelton
Mayor

P. H. Murphy
Secretary Treasurer

[Handwritten signature]

W. J. [unclear]
Minister of Public Works