

RECOMMENDATIONS:

SPC on Utilities and Corporate Services recommends that Council:

(1) Authorize the proposed Master Agreement subject to the following fundamental terms and conditions:

(a) PROPERTY:

The City-Owned Lands:

PLAN 0612469

BLOCK 1

LOT 1

EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.767 HECTARES (1.9 ACRES) MORE OR LESS

Municipally known as 10211 EAMON RD NW

PLAN 2216HE

BLOCK 1

LOT 1

EXCEPTING THEREOUT ALL MINES AND MINERALS

Municipally known as 10220 CROWCHILD TR NW

Portion of:

Road Right of Way known as 104 ST NW

The Church Owned Lands:

PLAN 0612469

BLOCK 1

LOT 2

EXCEPTING THEREOUT ALL MINES AND MINERALS

Municipally known as 10277 EAMON RD NW

PLAN 1065LK

BLOCK 2

CONTAINING .5370 HECTARES (1.33 ACRES) MORE OR LESS

EXCEPTING THEREOUT:

PLAN	NUMBER	HECTARES	ACRES	MORE OR LESS
ROAD	0612467	0.086	0.213	

Municipally known as 10307 EAMON ROAD NW

(b) PARTIES:

The City: THE CITY OF CALGARY

The Church: THE PENTECOSTAL ASSEMBLIES OF CANADA

(c) CONSIDERATION:

The Parties entered into an Access Easement and Parking Agreement dated 2005 November 01 pursuant to which The Church was granted an easement for parking and access on some of The City-Owned Lands. That Agreement required the parties to negotiate and execute a new agreement related to parking in and around The Church Owned Lands after certain events occurred. A dispute subsequently arose related to The Church, its employees, parishioners and invitees exercising the rights granted under that Agreement, specifically the right to non-exclusive use of up to 175 parking spaces on The City-Owned Lands on all days other than Sunday. To satisfy the requirement contained in the Access Easement and Parking Agreement and to settle the dispute, the parties shall enter into a Master Agreement on the terms and conditions contained herein, an easement agreement on the terms and conditions contained in (Recommendation (2)) and an easement agreement on the terms and conditions contained in (Recommendation (3)).

(d) CONDITIONS PRECEDENT:

- (i) The City to obtain passage of a bylaw closing a portion of 104 ST NW, thirty (30) days prior to the Commencement Date as outlined in (Recommendation (3)(d)).
- (ii) The City to obtain passage of a bylaw amending the land use for a portion of 104 ST NW to a land use satisfactory to The City and The Church, acting reasonably, and that will permit The Church's intended use of a portion of 104 ST NW as outlined in (Recommendation (3)(e)), thirty (30) days prior to the Commencement Date as outlined in (Recommendation (3)(d)).

These Conditions Precedent are for the mutual benefit of The City and The Church. Condition Precedent (1)(d)(i) is a "true" condition precedent and may not be waived. Condition Precedent (1)(d)(ii) may be satisfied or waived by both parties. The City in its capacity as the owner of the lands and not in its capacity as a government authority, and The Church will use reasonable efforts to satisfy these Conditions Precedent.

(e) SPECIAL TERMS AND CONDITIONS:

- (i) The City shall, at its sole cost and expense, develop and construct an at grade gravel parking lot including concrete curb stays on a portion of road right of way known as 104 ST NW. Such development and construction will be completed by the Commencement Date of the easement agreement referred to in (Recommendation (3)(d)). The Church shall be entitled to use all of the parking stalls constructed on the at grade gravel parking lot. The City shall, in good faith, attempt to develop and construct at least twenty (24) parking stalls which comply with applicable standards on the at grade gravel parking lot, provided that The City shall not be required to expend any more than \$350,000.00 plus an additional 5 per cent of \$350,000.00 for a total of \$367,500.00 in total cost and expense to satisfy the obligations to develop and construct the at grade gravel parking lot and to attempt to develop and construct at least twenty four (24) parking stalls on this parking lot. In the event that the total cost and expense to satisfy these obligations exceeds \$367,500.00, The City and The Church shall further discuss these obligations and the cost and expense to satisfy these obligations.
- (ii) The City shall, at its sole cost and expense, construct a 1.2-meter concrete sidewalk on the public road right of way from the portion of road right of way known as 104 ST NW to the existing sidewalk located in front of the Journey Church building located at 10307 Eamon RD NW. Such construction will be completed by the Commencement Date of the easement agreement referred to in (Recommendation (3)(d)).
- (iii) The City to reimburse The Church in the amount of \$28,000.00 including GST for past professional and legal fees incurred by The Church in respect to the finalization of the Master Agreement and Easement Agreements. The City will reimburse The Church when Council of the City approves this transaction, including the Master Agreement and the Easement Agreements and the Master Agreement and Easement Agreements are fully executed and delivered.
- (iv) The City, in its capacity as the owner of The City-Owned Lands and not in its capacity as a Government Authority, at its sole cost and expense, will use reasonable commercial efforts, working in cooperation with The Church, to obtain a land use amendment for The Church Owned Lands to permit The Church to rent out or license the parking spaces available on The Church Owned Lands.

(v) Upon:

- (a) the Master Agreement and the Easement Agreements being fully executed and delivered;
- (b) the Conditions Precedent referred to in (Recommendation (1)(d)) being satisfied or waived; and
- (c) The City fulfilling its construction and payment obligations as set out in (Recommendations (1)(e)(i)-(iii));

The Church agrees that the Master Agreement and the Easement Agreements shall satisfy the requirement to negotiate and execute a new agreement related to parking and shall settle the dispute and agrees that The City, its councillors, officers, employees, agents and contractors shall be released from any claims relating to the requirement to negotiate and execute a new agreement and relating to the dispute, save and except for any claims that The Church may have arising out of the Master Agreement and the Easement Agreements.

(vi) The parties to enter into Easement Agreements as per (Recommendations (2) and (3)).

(vii) The Church releases The City, its councillors, officers, employees, agents and contractors from and against all losses, liabilities, damages, costs (including any legal costs on a solicitor and his/her own client basis), claims, suits, actions or expenses arising from or in any way connected with the easement referred to in (Recommendation (3)) or any part thereof being found to be invalid or unenforceable by a court of competent jurisdiction, save and except for any losses, liabilities, damages, costs, claims, suits, actions or expenses which arise from The City directly challenging the validity or enforceability of the easement referred to in (Recommendation (3)) in a court of competent jurisdiction. This release shall survive the expiration or earlier termination of the easement agreement referred to in (Recommendation (3)).

(viii) In addition to the indemnity contained in (Recommendation (3)(f)(viii)), The Church shall indemnify and save harmless The City, its councillors, officers, employees, agents and contractors from and against all losses, liabilities, damages, costs (including any legal costs on a solicitor and his/her own client basis), claims, suits, actions or expenses arising from or in any way connected with the easement as referred to in (Recommendation (3)) or any part thereof being found to be invalid or unenforceable by a court of competent jurisdiction, including without limitation:

- (a) any losses, liabilities, damages, costs, claims, suits, actions or expenses arising from or connected with a loss of ownership or title to the Servient Lands as defined in (Recommendation (3)(a)) by The City, with the Servient Lands being valued at its then fair market value and at its then highest and best use;
- (b) any direct losses suffered or incurred by The City; and
- (c) any third party claims or any expenses that are not normally awarded at common law (including consultant fees, loss of profits and indirect damages).

Save and except for any losses, liabilities, damages, costs, claims, suits, actions or expenses which arise from The City directly challenging the validity or enforceability of the easement referred to in (Recommendation (3)) in a court of competent jurisdiction. This indemnity shall survive the expiration or earlier termination of the easement agreement referred to in (Recommendation (3)).

(2) Authorize the proposed easement subject to the following fundamental terms and conditions:

(a) PROPERTY:

Dominant Lands:

PLAN 0612469
 BLOCK 1
 LOT 2
 EXCEPTING THEREOUT ALL MINES AND MINERALS

Municipally known as 10277 EAMON RD NW

AND

PLAN 1065LK
 BLOCK 2
 CONTAINING .5370 HECTARES (1.33 ACRES) MORE OR LESS
 EXCEPTING THEREOUT:

PLAN	NUMBER	HECTARES	ACRES	MORE OR LESS
ROAD	0612467	0.086	0.213	

Municipally known as 10307 EAMON RD NW

Servient Lands:

PLAN 2216HE
BLOCK 1
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS

Municipally known as 10220 CROWCHILD TR NW

AND
PLAN 0612469
BLOCK 1
LOT 1
EXCEPTING THEREOUT ALL MINES AND MINERALS
AREA: 0.767 HECTARES (1.9 ACRES) MORE OR LESS

Municipally known as 10211 EAMON RD NW

(b) PARTIES:

Grantor: THE CITY OF CALGARY
Grantee: THE PENTECOSTAL ASSEMBLIES OF CANADA

(c) CONSIDERATION:

\$10.00 payable on the Commencement Date.

(d) TERM AND COMMENCEMENT DATE:

For as long as the Dominant Lands are used as a church and commencing on 2019 June 01.

(e) PERMITTED USES:

Subject to the provisions contained herein, the rights, privileges and easements in, over, across and through the Servient Lands for the free and unrestricted right for the Grantee and the employees, parishioners, and invitees of the Grantee to use the Servient Lands for the parking of vehicles and the free and unrestricted right to access, cross and pass over the Servient Lands whether on foot or in vehicles for the purpose of parking on the Servient Lands and accessing the Dominant Lands.

(f) SPECIAL TERMS AND CONDITIONS:

(i) The Grantee and the employees, parishioners, and invitees of the Grantee are granted the exclusive use of up to 175 parking spaces

on Sundays, and the non-exclusive use of up to 175 parking spaces for all days other than Sunday on the Servient Lands. Non-exclusive means parking is available on a first come first serve basis and available for the public at large to use.

- (ii) The Grantor shall operate and maintain parking facilities upon the Servient Lands to satisfy the requirements of the parking to be provided to the Grantee as provided herein.
- (iii) Subject to the provisions in (Recommendation 2(f)(iv)), the Grantee shall indemnify and save harmless the Grantor, its councillors, officers, employees, agents and contractors from and against all liabilities, damages, costs, claims, suits, actions or expenses arising out of any damage to property or injury to any person, including death occurring on the Servient Lands arising from or occasioned by the use of the Servient Lands by the Grantee or its employees, parishioners or invitees in the exercise of the rights and privileges granted by this easement agreement, except to the extent occasioned by the negligence or wilful misconduct of the Grantor. This indemnity shall survive the expiration or earlier termination of this easement agreement.
- (iv) The Grantor shall indemnify and save harmless the Grantee, its directors, officers, employees, agents and contractors from and against all liabilities, damages, costs, claims, suits, actions or expenses arising out of any damage to property or injury to any person, including death, occurring on the Servient Lands arising from or occasioned by the failure of the Grantor to keep and maintain the Servient Lands in a reasonable state of repair in accordance with Section 532 of the Municipal Government Act (Alberta), except to the extent occasioned by the negligence or wilful misconduct of the Grantee. This indemnity shall survive the expiration or earlier termination of this easement agreement.
- (v) The Grantor shall have the right and privilege from time to time and at all reasonable times to temporarily interrupt or suspend the use and enjoyment of the parking area on the Servient Lands, if reasonably necessary for the purpose of maintenance, or making alterations or improvements to this area, provided that if the Grantor intends to temporarily interrupt or suspend the use and enjoyment of the parking area, it shall, where possible, give seven (7) days prior written notice, and shall give at least forty eight (48) hours prior written notice, of the planned temporary interruption or suspension to the Grantee except where, due to emergency or otherwise, it is not possible in the circumstances to give any prior written notice. If the Grantor does temporarily interrupt or suspend

the use and enjoyment of the parking area on the Servient Lands, the Grantor shall make reasonable commercial efforts to arrange suitable alternative parking for the Grantee and the employees, parishioners and invitees of the Grantee during the temporary interruption or suspension.

- (vi) The Grantor shall maintain the signs on the Servient Lands advising of the parking privileges provided for the Grantee, its employees, parishioners and invitees as provided herein.
- (vii) The Grantor shall maintain the existing opening along the common property line between the Dominant Lands and Servient Lands to allow for the free movement of the Grantee and the employees, parishioners and invitees of the Grantee.
- (viii) The Grantor shall maintain the current curb or other barrier so as to preclude vehicular movement between the Dominant and Servient Lands along their common property line.
- (ix) The Grantor shall keep and maintain the Servient Lands and parking areas thereon in a reasonable state of repair in accordance with Section 532 of the Municipal Government Act (Alberta).
- (x) The Grantee shall at its sole cost and expense throughout the term of this easement maintain, in a form satisfactory to the Grantor, a commercial general liability insurance policy for bodily injury (including death) and property damage in an amount of not less than Five Million (\$5,000,000.00) Dollars inclusive limit for any one occurrence and shall include:
 - (a) the Grantor as an additional insured;
 - (b) a cross liability clause;
 - (c) products and completed operations coverage;
 - (d) broad form contractual liability coverage; and
 - (e) non-owned automobile coverage.

The Grantee shall provide certificates of insurance for the insurance policies mentioned above to the Grantor on or before the Commencement Date for the easement. If the Grantee fails to provide the Grantor with these certificates or otherwise fails to provide to the Grantor any evidence of the existence of any required insurance or to maintain such insurance, the Grantor shall have the right to place, at the sole cost and expense of the Grantee, any required insurance coverage or to pay any arrears of premiums. The Grantee shall reimburse the Grantor any such costs

and expenses, plus an administrative and management charge of fifteen (15) per cent.

(3) Authorize the proposed easement subject to the following fundamental terms and conditions:

(a) PROPERTY:

Dominant Lands:

PLAN 0612469
BLOCK 1
LOT 2
EXCEPTING THEREOUT ALL MINES AND MINERALS

Municipally known as 10277 EAMON RD NW

AND

PLAN 1065LK
BLOCK 2
CONTAINING .5370 HECTARES (1.33 ACRES) MORE OR LESS
EXCEPTING THEREOUT:

PLAN	NUMBER	HECTARES	ACRES	MORE OR LESS
ROAD	0612467	0.086	0.213	

Municipally known as 10307 EAMON RD NW

Servient Lands:

Portion of:

Road Right of Way known as 104 ST NW

(b) PARTIES:

Grantor: THE CITY OF CALGARY

Grantee: THE PENTECOSTAL ASSEMBLIES OF CANADA

(c) CONSIDERATION:

\$10.00 payable on the Commencement Date.

(d) TERM AND COMMENCEMENT DATE:

For as long as the Dominant Lands are used as a church and commencing on 2020 September 01 but subject to termination in accordance with (Recommendation (3)(f)(vii)).

(e) PERMITTED USES:

Subject to the provisions contained herein, the rights, privileges and easements in, over, across and through the Servient Lands for the free and unrestricted right for the Grantee and the employees, parishioners, licensees and invitees of the Grantee to use the Servient Lands:

- (i) for the parking of vehicles in the parking stalls and parking areas located on the Servient Lands; and
- (ii) for the non-exclusive, free and unrestricted right to access, cross and pass over sidewalks, drive aisles, parking stalls and parking areas located upon the Servient Lands whether on foot or in vehicles for the purpose of accessing the parking on the Servient Lands and accessing the Dominant Lands.

(f) SPECIAL TERMS AND CONDITIONS:

- (i) The Grantee, at its sole cost and expense, shall remove ice and snow from the sidewalk as referred to in (Recommendation (1)) so that the sidewalk is cleared to the bare surface, within twenty four (24) hours after the ice and snow has been deposited.
- (ii) Where the Grantee has not complied with (Recommendation (3)(f)(i)), the Grantor may, but shall not be obligated to, remove the ice and snow, and the Grantee shall be liable for the removal costs incurred by the Grantor.
- (iii) The Grantor agrees that it shall not grant any easement over the Servient Lands to any other party that permits that party to use the Servient Lands for the purpose of parking vehicles and that the Grantee shall have the exclusive right to use the parking stalls and parking areas located on the Servient Lands for the purpose of parking vehicles. The Grantee acknowledges and agrees that:
 - (a) the owner of the adjoining property (municipally known as 10313 Eamon RD NW) and the employees and invitees of the owner shall have the right to access, cross and pass over the Servient Lands to access and exit from the adjoining property and the Grantee shall not obstruct this right of access and exit;
 - (b) the Grantor, its councillors, officers, employees, agents and contractors shall have the right to access, cross and pass over the Servient Lands to access and exit from adjoining properties and shall remain entitled to use the Servient Lands for any other lawful purpose provided that it does not prevent or unduly hinder the Grantee from exercising its

- rights to use the Servient Lands for the purpose of parking vehicles and for access, crossing and passing over; and
- (c) the Grantor may grant to other parties easements or other rights to access or use the Servient Lands other than for the purpose of parking vehicles provided these easements or other rights do not prevent or unduly hinder the Grantee from exercising its rights to use the Servient Lands for the purpose of parking vehicles and for access, crossing and passing over.
 - (iv) The Grantor, in its capacity as the owner of the Servient Lands and not in its capacity as a Government Authority, agrees that the Grantee shall be permitted to rent out or license the parking spaces available on the Servient Lands.
 - (v) The Grantee to maintain the Servient Lands in a safe condition and state of repair and maintenance to the reasonable satisfaction of the Grantor. The Grantee shall be permitted to make improvements to the Servient Lands provided that it complies with all applicable laws, regulations and bylaws, that it pays all costs and expenses related to the improvements and that it obtains the Grantor's prior written consent before making any improvements.
 - (vi) The Grantor will be directly responsible for all costs related to developing and constructing an at grade gravel parking lot on the Servient Lands, including any offsite levies or other fees associated with this development and construction. From and after the Commencement Date, the Grantee to be directly responsible for all costs related to the Servient Lands including but not limited to utilities, local improvements and any taxes assessed.
 - (vii) This easement shall be terminated if the Dominant Lands cease to be used as a church. This easement is also subject to termination by either party upon two (2) years written notice. In the event the Grantor terminates the easement, the Grantor working in cooperation with the Grantee shall supply the Grantee with the same number of dedicated parking spaces as are provided on the Servient Lands for the remainder of the Term in reasonable proximity to the Dominant Lands on similar terms and conditions as contained herein.
 - (viii) The Grantee shall indemnify and save harmless the Grantor, its councillors, officers, employees, agents and contractors from and against all liabilities, damages, costs, claims, suits, actions or expenses arising out of any damage to property or injury to any person, including death occurring on the Servient Lands or the

sidewalk as referred to in (Recommendation (1)(e)(ii)) arising from or occasioned by the use of the Servient Lands or the sidewalk as referred to in (Recommendation (1)(e)(ii)) for the purposes herein by the Grantee or its employees, parishioners or invitees, or by any third party that rented out or licensed a parking space available on the Servient Lands, except to the extent occasioned by the negligence or wilful misconduct of the Grantor. This indemnity shall survive the expiration or earlier termination of this easement agreement.

- (ix) The Grantee may monitor and police the Servient Lands for unauthorized parking and shall be primarily responsible to have vehicles not authorized to park on the Servient Lands removed. The Grantor as the owner of the Servient Lands shall cooperate with the Grantee in having vehicles not authorized to park on the Servient Lands removed.
- (x) The Grantee shall maintain signage on the Servient Lands as agreed to by the Grantor.
- (xi) The parties agree that the Grantee is granting the Grantor an easement in, over, across and through the Servient Lands in accordance with the terms and conditions contained herein. The parties further agree that neither the title to the Servient Lands nor any other interest in land other than the easement shall be conveyed to the Grantee pursuant to the grant of easement on the terms and conditions contained herein.
- (xii) If this easement shall to any extent be found to be invalid or unenforceable by a court of competent jurisdiction due to the right of the Grantee to rent out or license the parking spaces available on the Servient Lands contained in (Recommendation (3)(f)(iv)), this right shall be severed from this easement and the remainder of this easement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
- (xiii) Subject to (Recommendation (3)(f)(xii)), if this easement shall to any extent be found to be invalid or unenforceable by a court of competent jurisdiction for any reason, then the Grantor shall have no obligation to provide the Grantee with parking on the Servient Lands or on any other lands. Notwithstanding the foregoing, the Grantor shall continue to have the obligation to provide the Grantee with parking as referred to in (Recommendation (2)).
- (xiv) The Grantor shall have the right and privilege from time to time and at all reasonable times to temporarily interrupt or suspend the use

and enjoyment of the parking area on the Servient Lands, if reasonably necessary for the purpose of making alterations or improvements to this area, provided that the Grantor will use reasonable efforts to minimize the duration of any temporary interruption or suspension of the use and enjoyment of the parking area on the Servient Lands. If the Grantor intends to temporarily interrupt or suspend the use and enjoyment of the parking area, it shall give fourteen (14) days prior written notice of the planned temporary interruption or suspension to the Grantee except where, due to emergency or otherwise, it is not possible in the circumstances to give such prior written notice. If the Grantor does temporarily interrupt or suspend the use and enjoyment of the parking area on the Servient Lands, the Grantor shall make reasonable commercial efforts to arrange suitable alternative parking for the Grantee and the employees, parishioners, licensees and invitees of the Grantee during the temporary interruption or suspension.

- (xv) The Grantee shall at its sole cost and expense throughout the term of this easement maintain, in a form satisfactory to the Grantor, a commercial general liability insurance policy for bodily injury (including death) and property damage in an amount of not less than Five Million (\$5,000,000.00) Dollars inclusive limit for any one occurrence and shall include:
- (a) the Grantor as an additional insured;
 - (b) a cross liability clause;
 - (c) products and completed operations coverage;
 - (d) broad form contractual liability coverage; and
 - (e) non-owned automobile coverage.

The Grantee shall provide certificates of insurance for the insurance policies mentioned above to the Grantor on or before the Commencement Date for the easement. If the Grantee fails to provide the Grantor with these certificates or otherwise fails to provide to the Grantor any evidence of the existence of any required insurance or to maintain such insurance, the Grantor shall have the right to place, at the sole cost and expense of the Grantee, any required insurance coverage or to pay any arrears of premiums. The Grantee shall reimburse the Grantor any such costs and expenses, plus an administrative and management charge of fifteen (15) per cent.