Agenda – Council – June 27, 2012

Report – Standing Policy Committee on Property and Development – June 12, 2012

Item No. 5 Encroachment Agreement - 1577 Henderson Highway (North Kildonan Ward)

STANDING COMMITTEE RECOMMENDATION:

On June 20, 2012, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, and submits the following to Council:

1. That a proposed Encroachment Agreement in favour of Petrasko Bros. Ltd., for the continued operation of a seasonal garden market located within the City owned right of way, shown as "Subject Property (Revised 2011), on attached Misc. Plan No. 9353/3, be approved in accordance with the proposed terms and conditions as set out in the attached Schedule A.

2. 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 – June 12, 2012

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 20, 2012, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 12, 2012, the Standing Policy Committee on Property and 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 Encroachment Agreement for the Operation of a Seasonal Garden Market located at 1577 Henderson Highway**

Critical Path: **Standing Police Committee on Property and Development**
Executive Policy Committee
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
J. Zabudney	B. Thorgrimson	M Ruta	D. Joshi, COO

RECOMMENDATIONS

1. That a proposed Encroachment Agreement in favour of Petrasko Bros. Ltd., for the continued operation of a seasonal garden market located within the City owned right of way, shown as "Subject Property (Revised 2011), on attached Misc. Plan No. 9353/3, be approved in accordance with the proposed terms and conditions as set out in the attached Schedule A.

2. 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

City of Winnipeg Bylaw No. 692-74 which regulates the construction and maintenance of certain encroachments in streets, under General Regulations Clause 4(1)(d), states that where an encroachment is of an unusual or commercial nature, the Director of Planning, Property and Development will negotiate a reasonable rental for recommendation to the CAO for subsequent referral to Council.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to lease the lands as shown on the attached Miscellaneous Plan No. 9353/3.

HISTORY

The subject property was acquired by the former Metro Corporation for future transportation purposes. Since 1972, the property has been leased to Petrasko Bros. Ltd. for the operation of a seasonal garden market. The most recent lease agreement, negotiated in 1995, is annual continuing at an annual rent of $8,400.00 plus realty taxes.

Recent construction of the Chief Peguis Trail necessitated a small change to the leased area of the Tenant and prompted a review of the lease. The new agreement will have a 5 year term and a rent of $13,200.00 per annum plus realty taxes. The Tenant has agreed to these terms.

The Public Works Department has no objection to the proposed encroachment, subject to conditions as noted in Schedule A.

The Corporate Finance Department, Risk Management Branch, reviewed the insurance requirements for this proposed encroachment and their comments have been incorporated into the terms and conditions.

This report seeks approval of the Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement **Date:** May 16, 2012

Project Name: **First Year of Program** **2012**

Proposed Encroachment Agreement for the Operation of a Seasonal Garden Market located at 1577 Henderson Highway

	2012	2013	2014	2015	2016
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	13,700	13,700	13,700	13,700	13,700
Net Cost/(Benefit)	$ (13,700)	$ (13,700)	$ (13,700)	$ (13,700)	$ (13,700)
Less: Existing Budget Amounts	(13,700)	(13,700)	(13,700)	(13,700)	(13,700)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Annual revenues consist of the $13,200 rent + a $500 administration fee. Business taxes otherwise due to the City are offset by the Small Business Tax Credit (i.e. net taxes are $0). This is assumed to remain constant.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Corporate Finance
Legal Services Department as to legal issues
Public Works Department

SUBMITTED BY

Department: Planning, Property and Development Department
Division: Real Estate
Prepared by: Kelly Udell
Date: May 18, 2012
File No. 7422/4

O:\Reports Directive\Real Estate\Leasing\(ku) Petrasko 1577 Henderson Highway.doc

Schedule "A"

PROPOSED TERMS AND CONDITIONS
For Encroachment Agreement
1577 Henderson Highway

(Shown as "Subject Property (Revised 2011)" on attached Misc. Plan No. 9353/3)

Landlord:	City of Winnipeg
Licensee:	Kathy Plikett (doing business as "Petrasko Bros. Ltd.")
Use:	For the purpose of operating a garden market on a seasonal basis only and not for any other purpose except with the prior written consent of the City.
Initial Term:	Five (5) year term, commencing on July 1, 2011.
Rent:	$13,200.00 per annum plus GST or $1,100.00 per month plus GST.
Renewal Option:	One five (5) year option, at the same terms and conditions, save for the renewal option, and subject to a rental rate review at the end of the initial five (5) year term, which rental rate shall at no time be less then $13,200.00 per annum or $1,100.00 per month plus GST.
Admin Fee:	Annual fee of $500.00 plus GST.
Municipal Taxes:	The Licensee shall pay to the local taxing authority all municipal taxes, which shall be billed directly to the Licensee.
Other Fees, Licenses, Taxes etc:	All license fees, business tax, etc. which may be charged in respect of the use and occupation of the Leased Area.
Insurance:	The Licensee shall provide and maintain the following insurance coverage at all times during the duration of the contract.

(1) Commercial general liability insurance, in the amount of at least two million dollars ($2,000,000.00) inclusive, with The City of Winnipeg added as an additional insured, a cross-liability clause; such liability policy to also contain licensee's legal liability, and products and completed operations;

(2) An All Risk property insurance policy, for the full replacement cost insuring contents, stock and equipment; Licensee's Improvements; and Business Interruption;

RECEIVED
CITY OF WINNIPEG
APR - 5 2012
PLANNING, PROPERTY & DEVELOPMENT DEPARTMENT

All property policies written on behalf of the Licensee shall contain a waiver of any subrogation right which the Licensee's insurers may have against the City and against those for whom the City is, in law, responsible, whether any such damage is caused by the act, omission

or fault of the City or by those for whom the City, is, in law, responsible; All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

And loss, if any, shall be payable to The City of Winnipeg, as their interests may appear;

And deductibles shall be borne by the Licensee;

And the Licensee shall not cancel, materially change, or cause any such policy or policies to lapse without minimum fifteen (15) days prior written notice to the City of Winnipeg;

And the Licensee shall file with the City a Certificate of Insurance in a form satisfactory to the City Solicitor;

And the City shall have the right to alter the limits and/or coverages as reasonably required from time to time.

Cancellation: 60 days written notice by either party, or immediately upon the Licensee being in default of the proposed terms and conditions of the Lease Agreement.

Other: Through an independent safety audit, the City has determined the current south approach is situated too close to the intersection of Chief Peguis Trail and Henderson Highway and will be closing the south approach and modifying the north approach to accommodate entering and exiting. The Licensee hereby acknowledges and accepts the change as determined by the City in it's sole discretion.

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, condition or suitability of the Subject Property for any use or purpose, nor as to any environmental conditions which may exist. The Licensee takes the Subject Property on an "as is" basis.

The development and maintenance of the Subject Property will 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 Subject Property for the intended use.

The Licensee shall maintain at it's own expense the Subject Property in a safe, clean and tidy conditions to the satisfaction of the City.

The Licensee acknowledges that there is an existing 1800mm interceptor sewer crossing through the Subject Property.

The City shall have the right of access to the Subject Property at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or without equipment for any

purpose whatsoever, including, but not limited to, those purposes related to viewing the state of repair, safety, protection, preservation or improvement of the Subject Property, and for doing any work to maintain, operate, repair, inspect or rehabilitate its existing water mains, sewer lines and appurtenances in or near to the Subject Property, without being responsible for any damage occasioned thereby.

The City reserves the right for MTS Communications Inc., and Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Subject Property for maintenance and/or repair of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby.

The Licensee shall pay all operating costs pertaining to the use of the Subject Property.

The Licensee will not construct or permit the construction of any building or structure whatsoever on the Subject Property, nor make any excavation therein or improvement thereon, without the written authority of the City's Director of Planning, Property and Development Department.

In the event that the Subject Property requires repair, the Licensee shall perform at its sole cost, expense and effort the required repairs within thirty (30) days of written notice provided by the City.

The Licensee is to comply with all laws, by-laws and regulations of any federal, provincial or municipal authority, and shall obtain all necessary permits pertaining to the use and occupancy of the Subject Property.

The Licensee is not to assign or sub-let or part with possession of all or any part of the lands without the Licensee first obtaining the prior written consent of the City. In such event, the City in its sole discretion may cancel this agreement and enter into a new agreement. Further the Licensee acknowledges and agrees that upon making an application for such consent by the City, the Licensee shall pay to the City a non-refundable administrative fee of two hundred and fifty dollars ($250.00) plus GST, or such amount as may from time to time be determined by the City in its sole discretion and acting reasonably.

Upon termination or cancellation of the Encroachment Agreement the Licensee shall remove its property and improvements from the Subject Property 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 improvements and restore the Subject Property at the sole risk and expense of the Licensee.

The Licensee to indemnify and save harmless the City from and against any and all claims for damages which may arise out of the use of the premises by the Licensee.

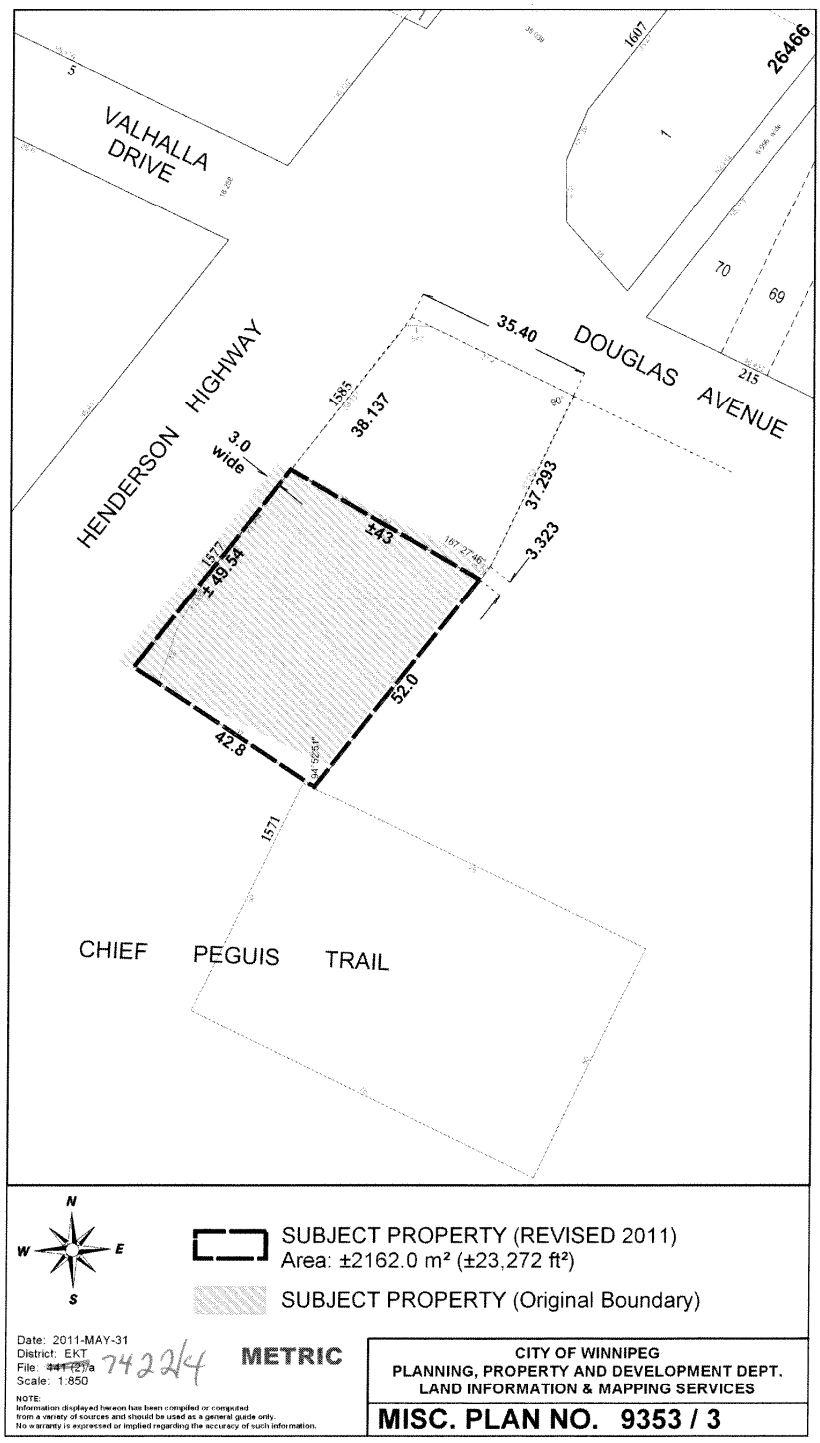
The Licensee shall enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the City Solicitor/Director of Legal Services deems necessary and in a form satisfactory to the City Solicitor/Director of Legal Services.

Final approval by the City of Winnipeg's Council, or its delegated authority.

I, Kathy Plikett, doing business as Petrasko Bros. Ltd., hereby agree to enter into a lease agreement with the City of Winnipeg for the use of the property identified as "Subject Property (Revised 2011)" on the attached Misc. Plan No. 9353/3 and in accordance with the terms and conditions as outlined herein the Proposed Terms and Conditions.

Kathy Plikett d/b/a Petrasko Bros. Ltd.	April 5/12 **Date**
	Date

Schedule "A"



of 5