**Minute No. 445**
**Report – Standing Policy Committee on Property and Development – April 15, 2014**

**Item No. 12 Lease & Encroachment Agreement to Allow for the Use of City-Owned Lands & Right-of-Way at 131-135 Regent Avenue West for the Purpose of Erecting and Maintaining a Clock Tower and Planter**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the terms and conditions attached as Schedule "A" for a Lease and Encroachment Agreement in favour of Transcona BIZ for the purpose of a clock tower and planter identified as "Lease Area" and "Encroachment Area" on Misc. Plan 14095/1 be approved, with the following amendment:

   A. That the one-time administrative fee of $250 be waived.

2. That the City enters into a Lease and Encroachment Agreement and such other agreements as determined necessary by the City Solicitor/Acting Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the Lease and Encroachment Agreement and such other agreements as determined necessary by the City Solicitor/Acting Director of Legal Services, in accordance with the terms and conditions set forth in Schedule "A" and such other terms and conditions deemed necessary by the City Solicitor/Acting Director of Legal Services to protect the interests of the City.

4. The Encroachment Agreement between the City and Transcona Business Improvement Zone adopted by Council December 14, 2011 be rescinded with the adoption of the Lease and Encroachment Agreement.

5. 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 – April 15, 2014**

DECISION MAKING HISTORY:

Moved by Councillor Browaty,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 23, 2014, 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 April 15, 2014, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service with the following amendment:

- Add the following to the end of Recommendation 1:

  ", with the following amendment:

  A. That the one-time administrative fee of $250 be waived."

and submitted the matter to the Executive Policy Committee and Council.

# ADMINISTRATIVE REPORT

**Title:** **Proposed Lease & Encroachment Agreement to Allow for the Use of City-Owned Lands & Right-of-Way at 131-135 Regent Avenue West for the Purpose of Erecting and Maintaining a Clock Tower and Planter**

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

## AUTHORIZATION

| Author | Department Head | CFO | CAO |
|---|---|---|---|
| B. Erickson | B. Thorgrimson | M. Ruta | M. Jack<br>A/CAO |

## RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule “A” for a Lease and Encroachment Agreement in favour of Transcona BIZ for the purpose of a clock tower and planter identified as “Lease Area” and “Encroachment Area” on Misc. Plan 14095/1 be approved.

2. That the City enters into a Lease and Encroachment Agreement and such other agreements as determined necessary by the City Solicitor/Acting Director of Legal Services to implement the intent of the foregoing.

3. That the authority be delegated to the Director of Planning, Property & Development to negotiate and approve the final terms and conditions of the Lease and Encroachment Agreement and such other agreements as determined necessary by the City Solicitor/Acting Director of Legal Services, in accordance with the terms and conditions set forth in Schedule “A” and such other terms and conditions deemed necessary by the City Solicitor/Acting Director of Legal Services to protect the interests of the City.

4. The Encroachment Agreement between the City and Transcona Business Improvement Zone adopted by Council December 14, 2011 be rescinded with the adoption of the Lease and Encroachment Agreement.

5. 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

Encroachment By-law 692/74, General Regulations, 4. (1) d, states:

"Where the encroachment is of an unusual or commercial nature that it be referred to the Director of Land and Development Services 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 addition to the preceding, in accordance with the Council Order of July 18, 1979, the Standing Policy Committee on Property and Development shall authorize the leasing or rental of City properties for which the Director of Planning, Property and Development Department has no authority.

In this regard, the Planning, Property and Development Department has negotiated Terms and Conditions of a Lease and Encroachment Agreement, in favour of Transcona BIZ.

## IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to entering into a Lease and Encroachment Agreement shown on the attached Miscellaneous Plan No. 14095/1.

On December 14, 2011, the terms and conditions for an Encroachment Agreement between the City and Transcona BIZ comprising the lands identified as "Encroachment Area" on misc. plan 14095/1 were adopted by Council. As this prior agreement omitted the area identified as "Lease Area" on misc. plan 14095/1 necessary for the realization of this project it was determined that the "Lease Area" and "Encroachment Area" on misc. plan 14095/1 should be combined in the same agreement. As such, the 2011 Encroachment Agreement is to be considered rescinded upon adoption of the Lease and Encroachment Agreement.

## HISTORY

The Transcona BIZ facilitated a project to develop the property at 131-135 Regent Avenue West into a community gathering space in light of Transcona's centennial anniversary. The space comprises a fountain, heritage wall, sculptures, and amphitheater, in addition to the planter and clock tower, the latter of which serves as the cornerstone of the project.

An application was submitted to the City's Zoning and Permits Branch to erect and maintain a clock tower and planter encroaching onto the City right-of-way at 131-135 Regent Avenue West.

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.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed Lease and Encroachment Agreement and their comments have been incorporated into the terms and conditions.

The Planning, Property and Development Department has negotiated proposed terms and conditions of a Lease and Encroachment Agreement in favour of Transcona BIZ.

This report seeks approval of the Lease and Encroachment Agreement as negotiated.

## FINANCIAL IMPACT

## Financial Impact Statement

**Date:** March 28, 2014

**Project Name:**

**First Year of Program** **2014**

Proposed Lease & Encroachment Agreement to Allow for the Use of City-Owned Lands & Right-of-Way at 131-135 Regent Avenue West for the Purpose of Erecting and Maintaining a Clock Tower and Planter

| | 2014 | 2015 | 2016 | 2017 | 2018 |
|---|---|---|---|---|---|
| **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 | 313 | 63 | 63 | 63 | 63 |
| Net Cost/(Benefit) | $ (313) | $ (63) | $ (63) | $ (63) | $ (63) |
| Less: Existing Budget Amounts | (313) | (63) | (63) | (63) | (63) |
| Net Budget Adjustment Required | $ - | $ - | $ - | $ - | $ - |

**Additional Comments:** Revenues in 2014 consist of a one-time administration fee of $250 + $62.50 in rental charges. From 2015 onward, revenues consist of the rental charge only.

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

## CONSULTATION

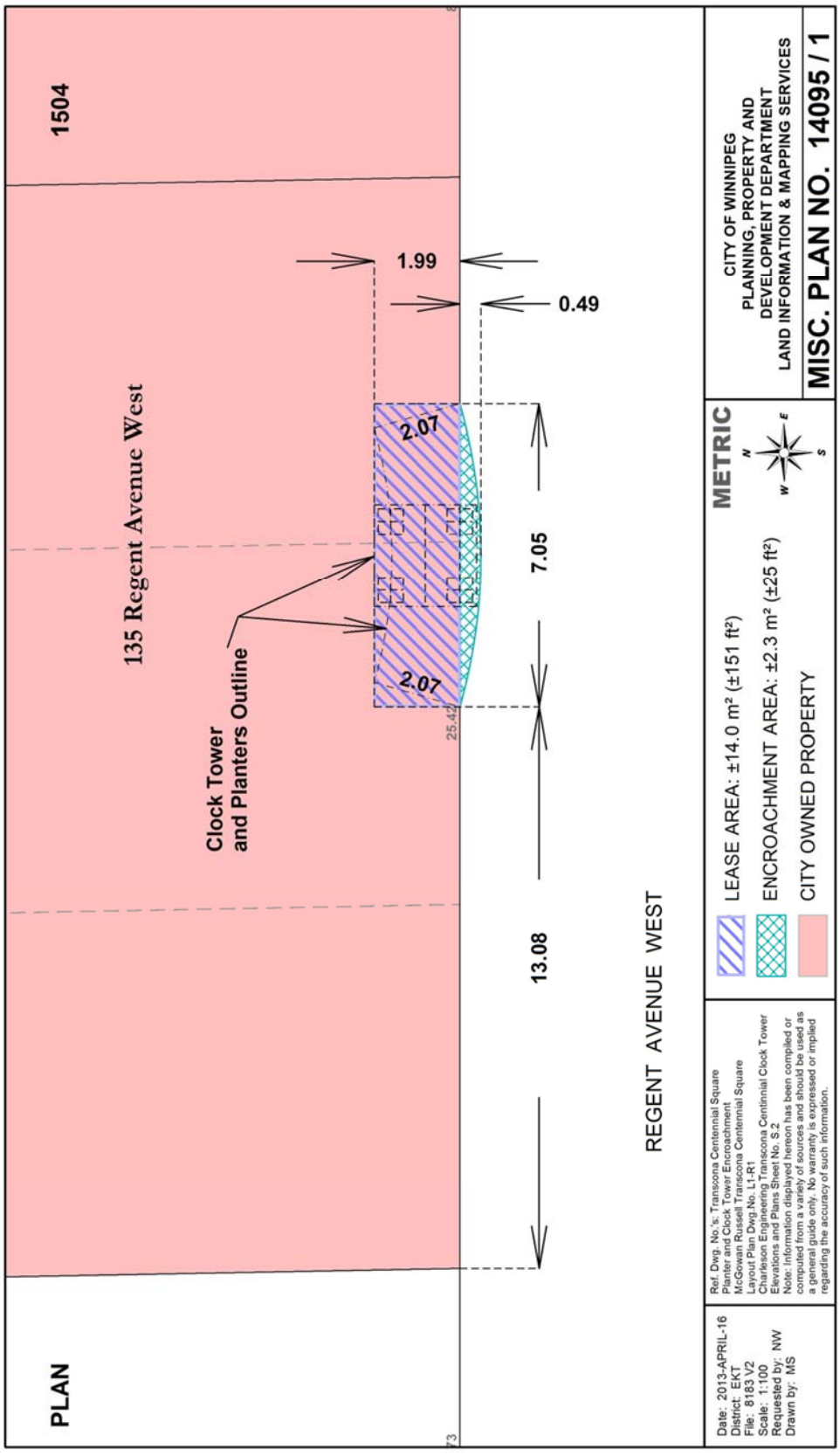
**In preparing this report there was consultation with:**

Legal Services Department as to legal issues
Risk Management, Corporate Finance

## SUBMITTED BY

| | |
|---|---|
| Department: | Planning, Property and Development |
| Division: | Municipal Accommodations |
| Prepared by: | Nolan Winters |
| Date: | April 1, 2014 |
| File No.: | MA2014-057 |

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PLAN
1504
135 Regent Avenue West
Clock Tower
and Planters Outline
1.99
0.49
2.07
2.07
7.05
13.08
REGENT AVENUE WEST
METRIC
LEASE AREA: ±14.0 m² (±151 ft²)
ENCROACHMENT AREA: ±2.3 m² (±25 ft²)
CITY OWNED PROPERTY
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14095 / 1
Date: 2013-APRIL-16
District: EKT
File: 8183 V2
Scale: 1:100
Requested by: NW
Drawn by: MS
Ref. Dwg. No.'s: Transcona Centennial Square
Planter and Clock Towsr Encroachment
McGowan Russell Transcona Centennial Square
Layout Plan Dwg.No. L1-R1
Charleson Engineering Transcona Centinnial Clock Tower
Elevations and Plans Sheet No. S.2
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.

**SCHEDULE A**

**PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AND LEASE AGREEMENT TO ERECT AND MAINTAIN A PLANTER AND CLOCK TOWER LOCATED IN BOTH THE REGENT AVENUE WEST RIGHT OF WAY AND AT 131-135 REGENT AVENUE WEST, OTHERWISE KNOWN AS TRANSCONA CENTENNIAL SQUARE**

| | |
|---|---|
| Use: | Erection and Maintenance of a planter and a clock tower |
| Licensee: | Transcona Biz (hereinafter called the Licensee'); |
| Area: | Shown and identified as "Lease Area: ±14m$^2$ (±151ft$^2$)" "Encroachment Area: ±2.3 m$^2$ (± 25ft$^2$)" on Misc. Plan No. 14095/1, attached; (hereafter called the 'Lands') |
| Term: | Annual Continuing, commencing the first day of the month following approval from the City's Standing Committees and Council; or such other date as mutually agreed upon; |
| Rental: | $62.50 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, plus an initial administrative fee of $250.00 plus GST; |
| Insurance: | Licensee to indemnify and save harmless the City from and against any and all claims for damages or injuries, including death, which may arise out of the use of the Premises by the Licensee;<br><br>The Licensee shall ensure that any Contractor or Sub-contractor hired to perform the construction, maintenance work or repairs to the Clock Tower shall provide a certificate of insurance evidencing general Liability insurance in the amount of not less than $2,000,000 per occurrence with a $5,000,000 general aggregate covering bodily injury, property damage and personal injury. All liability policies must include the City of Winnipeg as an additional insured and include contractual liability, broad form completed operations, and a cross liability of severability of interest clause and a provision for 30 days written notice of cancellation/termination; |

Such certificate of insurance must be in a form satisfactory to the Supervisor of Insurance and must be provided at least two business days prior to the commencement of any work on the site;

Deductibles shall be borne by the Contractor and/or Sub-Contractor;

Cancellation: Ninety (90) days written notice;

Conditions: The Licensee acknowledges and agrees that the portion of the clock tower and planter that is identified as "ENCROACHMENT AREA: ±2.3 $m^2$ (±25 $ft^2$)" is located within a street and is governed by The City of Winnipeg By-law No. 692/74;

The Licensee understands and agrees that the 'Lands' are licensed on an "as is" basis.

The City shall have the right to access the Lands 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 to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines, the existing pumping station and appurtenances located within the Lands.

The Licensee shall be responsible for all costs, utilities, and operating expenses in connection with the use and occupation of the Lands including, but not limited to; license fees, business tax, garbage removal, snow removal, security, etc. The Licensee shall also be responsible for cleanup of litter in the immediate area as a result of use and occupation of the Lands.

The Licensee shall not assign this agreement or sublet the Lands without the prior written consent of the City.

The Licensee shall release the City from and against any and all claims for damages or injuries, including death that may arise from the use of the Lands by the Licensee.

That all utilities be permitted to enter the area for maintenance, repair or installation of services at anytime without notice to the Licensee and that any removal or relocation of existing facilities as a result of the proposed applicant will be at the expense of the Licensee. Prior to any digging or excavation, Manitoba Hydro and/or Centra Gas Manitoba Inc. advise the Licensee contact the Call-Before-You Dig line at 480-1212;

The Urban Forestry Branch will not prune adjacent trees specifically for clock tower visibility in the future and the Licensee will be solely responsible for the maintenance and repairs of the structure, including clock mechanics and solar panels;

The Licensee shall maintain the Clock Tower and Planter in a safe, working order and undertake all repairs for the duration of the Term;

In the event of cancellation, termination or expiration of the agreement, the City shall have the option, in its sole discretion, to require the Licensee to demolish the Clock Tower and Planters and restore the site to a condition acceptable to the Director, acting reasonably, at the Licensee's sole cost and expense within 90 days from the date of cancellation, termination or expiration;

In the event the Encroachment Agreement is cancelled and/or terminated the City shall assume

The Licensee shall have a qualified engineer complete a structural inspection of the Clock Tower every three (3) years beginning in 2016 and will submit a copy of the report to the Director of Public Works. The Licensee shall complete any required repairs or upgrades as recommended by the structural inspection report or as required by the Director of Public Works at its sole cost and expense within thirty (30) days of receipt of the structural inspection report or written notice provided by the City. As the Clock Tower ages the Public Works Department reserves the right to increase the frequency as the situation may dictate.

That if any removal, relocation or adjustment of existing MTS facilities is required, it will be at the expense of Licensee; that extreme caution be used when excavating in the vicinity of MTS buried plant and that the Licensee contact the Buried Plan Location Service at 941-7267, 48 hours prior to excavation for further confirmation in the field;

That all applicable permits be obtained prior to any development;

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The proposed terms and conditions of the proposed Encroachment Agreement are subject to the final approval of the City's Standing Committees and Council and to the City Solicitor/Director of Legal Services as to form and content.

Any other terms and conditions as are deemed necessary by the Director of the Planning, Property and Development Department, the Director of Public Works Department and by the City Solicitor/Director of Legal Services to protect the City's interests and agreed to by the Licensee, acting reasonably.

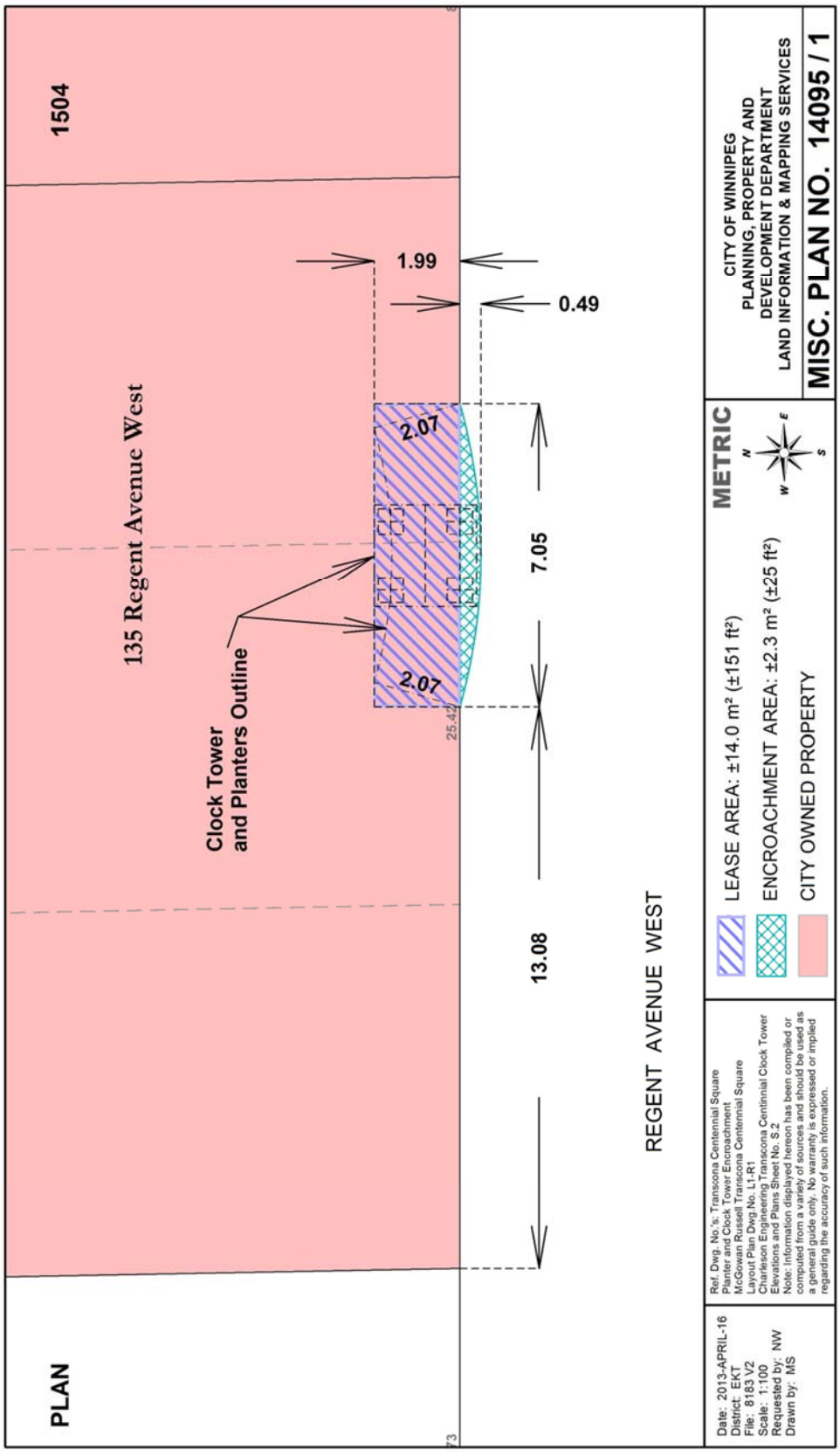
I, RICK PURLING, **AM DULY AUTHORIZED TO ACT ON BEHALF OF THE TRANSCONA BIZ, HEREBY AGREE TO ENTER INTO AN ENCROACHMENT AND LEASE AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS 'ENCROACHMENT AREA' AND 'LEASE AREA' ON THE ATTACHED MISC. PLAN NO. 14095/1 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.**

**TRANSCONA BIZ:**

**Per:** _____ MARCH. 17/14
**DATE**

RICK PURLING
**NAME**

TRANSCONA BIZ PRESIDENT.
**TITLE**


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Requested by: NW
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Ref. Dwg. No.'s: Transcona Centennial Square
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McGowan Russell Transcona Centennial Square
Layout Plan Dwg.No. L1-R1
Charleson Engineering Transcona Centinnial Clock Tower
Elevations and Plans Sheet No. S.2
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