Minute No. 682
Report – Standing Policy Committee on Property and Development – October 8, 2013

Item No. 11 Lease Agreement between the City and the St. James-Assiniboia School Division

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 for a 10-year lease agreement between the City and St. James-Assiniboia School Division be approved subject to the proposed terms and conditions attached on 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 – October 8, 2013

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 October 16, 2013, 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 October 8, 2013, 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 Terms and Conditions for a Lease Agreement between the City and The St. James-Assiniboia School Division, for a portion of Bourkevale Community Centre land as shown as "Lease Area" on Misc. Plan No. 12935/1**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
I. Day	B. Thorgrimson	M. Ruta	D. Joshi COO

RECOMMENDATIONS

1. That the proposed terms and conditions for a 10-year lease agreement between the City and St. James-Assiniboia School Division be approved subject to the proposed terms and conditions attached on 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

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 property for which the Director of Planning, Property and Development has no authority. In this regard, the Planning, Property and Development Department have negotiated the proposed terms and conditions for a lease agreement in favour of James-Assiniboia School Division for the use of a portion of City-owned lands at 100 Ferry Road identified as "Lease Area" on Misc. Plan No. 12935/1 as attached.

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. 12935/1.

The Lessee will supply and install wood fencing bollards facing Ferry Road at the sole cost and expense of The St. James-Assiniboia School Division to protect the City park property within 1 month of completion of construction of the running track.

The Lessee shall re-grade and sod the City park property to the south of the Leased Area, including but not limited to, a new ¾ mini soccer field, to the satisfaction of the Superintendent of Parks and Open Space - North Area. Construction of the mini field shall commence no later than 1 year from completion of the running track.

The Lessee, at their sole cost and expense, shall remove the 3 dead trees (as per Urban Forestry) located on the Leased Area.

The City park property south of the Leased Area is subject to a future assessment of potential drainage issues. The cost of any drainage improvements required as a result of the assessment will be shared equally between the Lessee and the City on a 50/50 basis.

The proposed lease agreement will formalize the terms and conditions for the use of the "Lease Area" as outlined on Misc. Plan 12935/1.

HISTORY

The portion of City property to be leased is part of the Bourkevale Community Centre and is situated on a City-owned site located at 100 Ferry Road and shown as "Lease Area" on Misc. Plan.12935/1.

A request was submitted to the Superintendent of Parks North for the use of City-owned land shown as "Leased Area" on Misc Plan No. 12886/1 for the purpose of a 400 meter running track with a football/soccer field in the centre.

The application was circulated to applicable City departments and public utilities for consideration and comments. No objections were received. The Corporate Finance Department, Risk Management Branch, has reviewed the insurance requirements for this proposed agreement and their comments have been incorporated into the proposed terms and conditions.

This report seeks approval of the Proposed Lease Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement

Date: September 12, 2013

Project Name:

First Year of Program **2013**

Proposed Lease Agreement with the St. James-Assiniboia School Division for the use of a portion of City-owned lands located at 100 Ferry Road as shown as "Leased Area" on Misc Plan 12935/1

	2013	2014	2015	2016	2017
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	251	251	251	251	251
Net Cost/(Benefit)	$ (251)	$ (251)	$ (251)	$ (251)	$ (251)
Less: Existing Budget Amounts	(251)	(251)	(251)	(251)	(251)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues consist of nominal rent of $1/annum + an annual admin fee of $250. The cost of any drainage improvements required as a result of the assessment to be shared between the Lessee and the City on a 50/50 basis have been excluded from this analysis due to uncertainty regarding amount and timing.

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

CONSULTATION

In preparing this report there was consultation with:

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

SUBMITTED BY

Department: Planning, Property and Development
Division: Municipal Accommodations
Prepared by: Marlene Haderer

Date: September 13, 2013
File No. MA 2013-134

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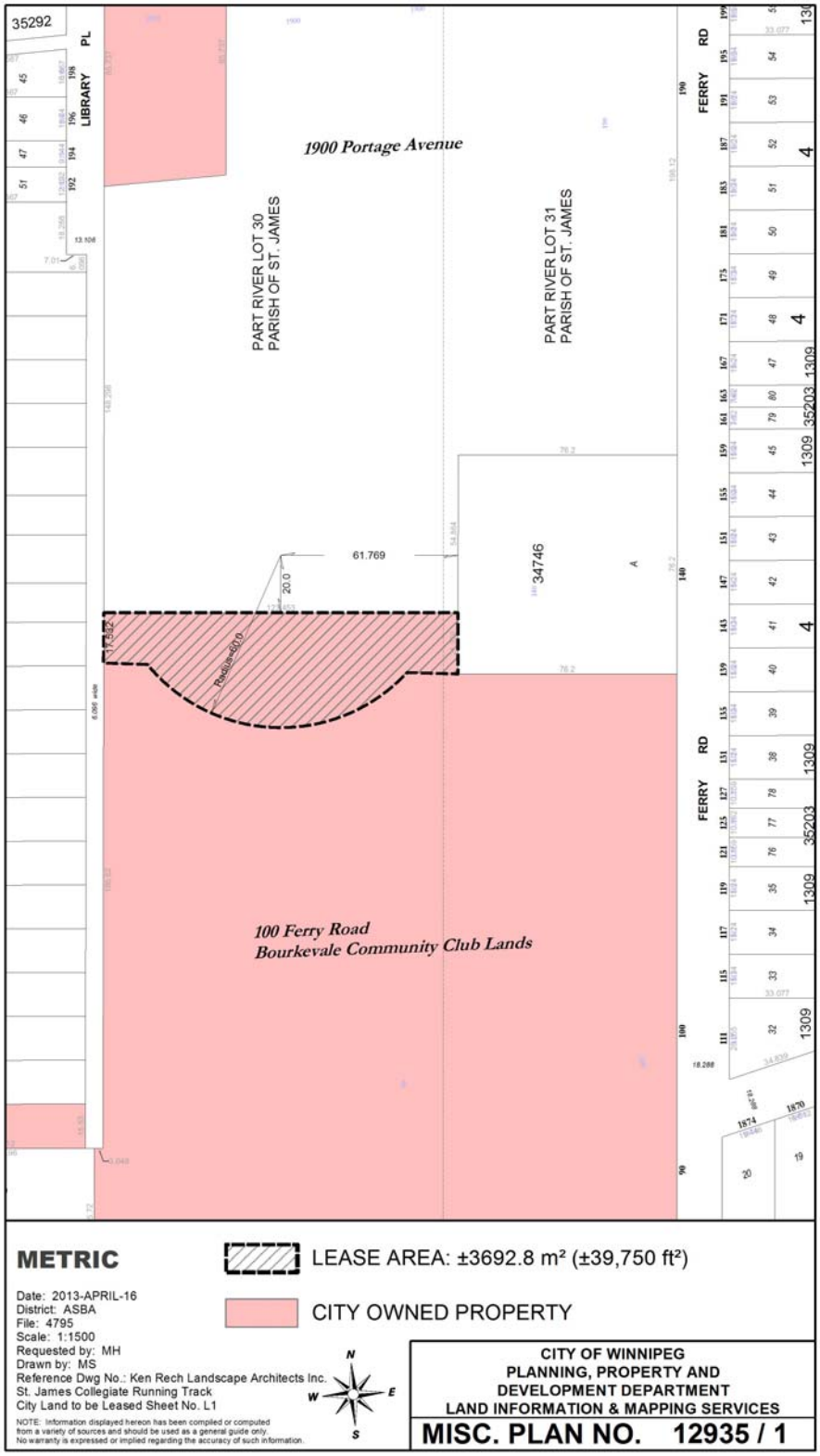
35292
LIBRARY PL
1900 Portage Avenue
PART RIVER LOT 30
PARISH OF ST. JAMES
PART RIVER LOT 31
PARISH OF ST. JAMES
FERRY RD
61.769
20.0
34746
17342
Radius=60.0
100 Ferry Road
Bourkevale Community Club Lands
METRIC
LEASE AREA: ±3692.8 m² (±39,750 ft²)
CITY OWNED PROPERTY
Date: 2013-APRIL-16
District: ASBA
File: 4795
Scale: 1:1500
Requested by: MH
Drawn by: MS
Reference Dwg No.: Ken Rech Landscape Architects Inc.
St. James Collegiate Running Track
City Land to be Leased Sheet No. L1
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.
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CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12935 / 1

Schedule A

Proposed Terms and Conditions for a Lease Agreement between the City and The St. James-Assiniboia School Division, for a portion of Bourkevale Community Centre for running a track and field.

Landlord:	The City of Winnipeg;
Lessee:	The St. James-Assiniboia School Division;
Leased Area:	Shown as "Lease Area" on the attached Misc. Plan. No.12935/1;
Use:	To use a portion of City-owned property (hereinafter referred to as the "Leased Area") for running a track and football/soccer field, for school purposes only, in conjunction with St. James Collegiate and not to use or permit the Leased Area or any part thereof to be used for any other purpose without the written permission of the Director of Planning, Property and Development (hereinafter referred to as Director);
Term:	Ten years commencing the first day of the month following approval by Council or its delegated authority;
Renewal	Lessee has the option to renew this Lease Agreement on the same terms and conditions for an additional ten (10) year term, except for this right of renewal;
Rent:	Annual rent in the sum of $1.00 plus GST;
Realty Taxes:	Lessee is responsible for all realty taxes, municipal taxes, school taxes, local improvements, license fees, business tax, etc. of which may be charged in respect of the use and occupation of the Leased Area;
Admin Fee:	An annual administration fee of $250.00 plus GST;
Cancellation:	This agreement is subject to cancellation by either party, for any reason by giving 365 days written notice; Should the City cancel the proposed lease by written notice during the initial Term of 10 years, the City shall be responsible to reimburse the Tenant for an amount equivalent to one-tenth of the Tenant's initial capital improvement expenditures representing each year remaining in the Term at the time of cancellation, which amount shall be limited to a total maximum reimbursement of $510,000 based on an estimate of Six Hundred Thousand Dollars ($600,000) for total capital improvement expenditures. If the tenant's initial capital improvement expenditures total is less than the estimated value, then

the total maximum reimbursement will be reduced based on the calculations set out herein. The Tenant's initial capital improvement expenditures at the Commencement of the Term for the purposes of calculation in this clause will be determined on the Commencement Date and will be subject to the final approval of the City's Director of Planning, Property & Development, acting reasonably. For greater certainty, the value to be reimbursed will be calculated from the date the Tenant is required to yield up possession of the Leased Lands to the expiry date of the 10 year Term. If the cancellation date falls during the middle of a Lease Year, the one-tenth amount for that year will be prorated to the amount of days remaining in that Lease Year. If the amount calculated to be reimbursed exceeds the total maximum reimbursement amount payable by the City of $510,000, the City shall only be responsible to pay to the Tenant the total maximum reimbursement amount of $510,000.

Insurance:

The Lessee shall provide and maintain the following insurance coverage at all times during the duration of the contract;

Commercial general liability insurance including but not limited to protection for claims of bodily injury and property damage, personal and advertising injury and product and completed operations liability in the inclusive amount of at least five million dollars ($5,000,000) per occurrence with a minimum of five million dollars ($5,000,000) general aggregate. The City of Winnipeg shall be covered as an additional insured. The Lessee shall also ensure that such liability policy also contains a cross-liability or severability of interest clause, contractual liability, employees as additional insured's, Lessee's legal liability for a limit commensurate with the space occupied, and shall not contain any special limitations on the scope of coverage afforded the City, its officers, officials, employees, agents or volunteers;

If required, automobile liability insurance for owned and non-owned automobiles used for or in connection with the Lease in the amount of at least two million ($2,000,000.00) to remain in place at all times during the full term of the Lease Agreement; such insurance may be meet through the commercial general liability cover where applicable;

The Lessee shall take out all polices with insurers licensed to and carrying on business in the Province of Manitoba;

Deductibles shall be borne by the Lessee;

The Lessee shall not cancel, or cause any such policy or policies to lapse without a minimum thirty (30) days prior written notice to the City of Winnipeg;

The Lessee shall provide written notice to the City of Winnipeg of any material changes to their policies within thirty (30) days of the change taking effect;

The Lessee shall file with the City an annual Certificate of Insurance in a form satisfactory to the City Solicitor;

The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of the Lease Agreement and for any subsequent renewals thereof, provided that the City shall give the Lessee reasonable notice and shall request reasonable change;

Lessee Responsibilities:

The Lessee agrees to use the Leased Area for school purposes, as a running track, football/soccer field or related activities only and for no other purposes whatsoever;

The Lessee agrees to be responsible for all costs incurred in the development and future maintenance of the running track and football/soccer field within the "Lease Area" and as outlined on the attached Misc. Plan No. 12935/1;

Lessee agrees not to erect or permit the erection of any buildings or additional structures within the Leased Area, without the prior written approval from the Director;

Lessee will maintain the Leased Area in a neat and tidy condition satisfactory to the Director;

To assume all costs and expenses incurred by the City in repairing actual damage to the Leased Area and/or utilities therein, that is caused by or arises out of the Lessee's use and occupancy of the Leased Area;

Lessee to release, indemnify and save harmless the City from and against any and all claims for damages which may arise out of the use of the Leased Area by the Lessee.

The Lessee agrees to not allow or permit or carry on, in or upon the Leased Area or any part thereof, any noxious, noisome or offensive art, or anything whatsoever which shall or may grow to the annoyance, nuisance, damage or disturbance of the City or the owners or occupiers of neighbouring properties;

The Lessee shall not be permitted to assign the agreement, sub-let, place signage or advertising or leasehold improvements without prior written approval from the Director;

Lessee to comply with all applicable by-laws, statutes, regulations, etc. pertaining to the use and occupancy of the Leased Area and shall obtain all necessary permits;

The City shall have the right of access to enter upon the City's Property, including without limitation, the Leased Area, with or without equipment:

a) to view the state of repair of the Leased Area and the Lessee shall within ten (10) days of the City giving to the Lessee notice to repair the Leased Area in accordance with such notice. In the event the Lessee fails to repair in accordance with such notice as foresaid, the City may do such work at the sole cost and expense of the Lessee;
b) for the purpose of maintaining and/or repairing its utilities in or near the City's Property;
c) For any other purpose;

Without being responsible for any damages to the Leased Area or the Lessee's property;

Lessee shall not file any caveat or other encumbrance against the Leased Area;

Lessee shall not release into the environment, or deposit, discharge, place or dispose of, at on, or near the Leased Area and/or adjoining City land, any dangerous goods as that term is defined in The Dangerous Goods Handling and Transportation Act, R.S.M. 1987, c.D12, as amended, replaced or substituted from time to time;

In the event of the Lessee not complying with the terms and conditions contained in the agreement and such default continues for a period of thirty (30) days after notice to remedy such default, the agreement is subject to immediate cancellation by the Director;

Special Conditions:

The Lessee will supply and install wood fencing bollards facing Ferry Road at the sole cost and expense of The St. James-Assiniboia School Division to protect the City park property within 1 month of completion of construction of the running track;

The Lessee shall re-grade and sod the City park property to the south of the Leased Area, including but not limited to, a new ¾ mini soccer field, to the satisfaction of the

Superintendent of Parks and Open Space - North Area. Construction of the mini field shall commence no later than 1 year from completion of the running track,

The Lessee, at their sole cost and expense, shall remove the 3 trees located on the Leased Area as indicated on Misc. Plan. No. 12935/2;

The City park property south of the Leased Area is subject to a future assessment of potential drainage issues. The cost of any drainage improvements required as a result of the assessment will be shared equally between the Lessee and the City on a 50/50 basis;

The Tenant 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.

The proposed terms and conditions are subject to the approval of the Standing Policy Committee on Property and Development and to the City Solicitor's approval as to form and content.

I, Bruce Cheques, representative of The St. James-Assiniboia School Division, hereby acknowledge and agree to enter into a Lease Agreement with the City of Winnipeg for the use of the area identified as "Leased Area " on Misc. Plan No. 12935/1 as attached in accordance with the proposed terms and conditions as outlined herein.

THE ST. JAMES-ASSINIBOIA SCHOOL DIVISION

Per: Bruce Cheques — June 18, 2013
Name: Bruce Cheques — Date
Title: Chairman of the St. James Assiniboia School Board

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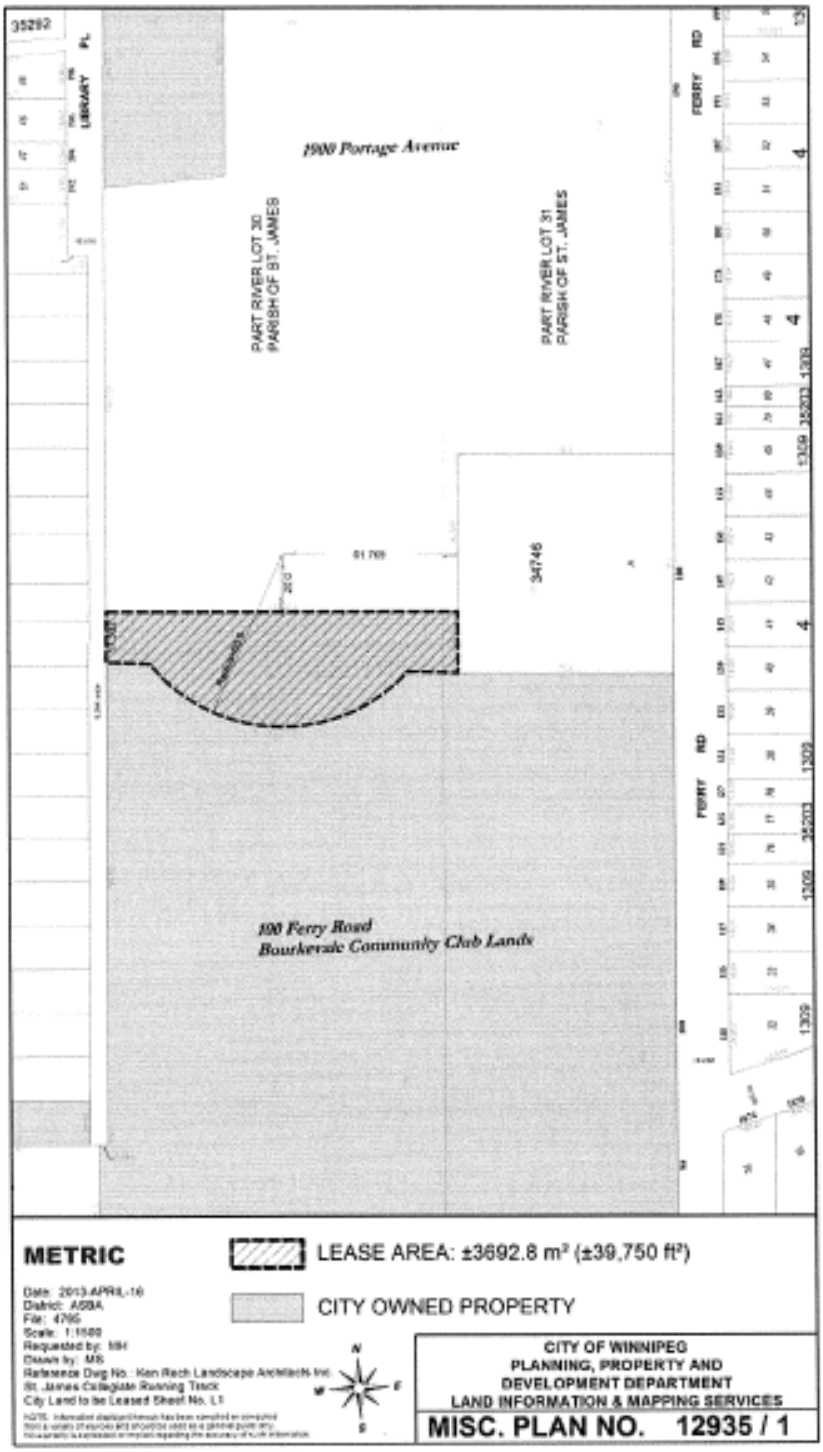
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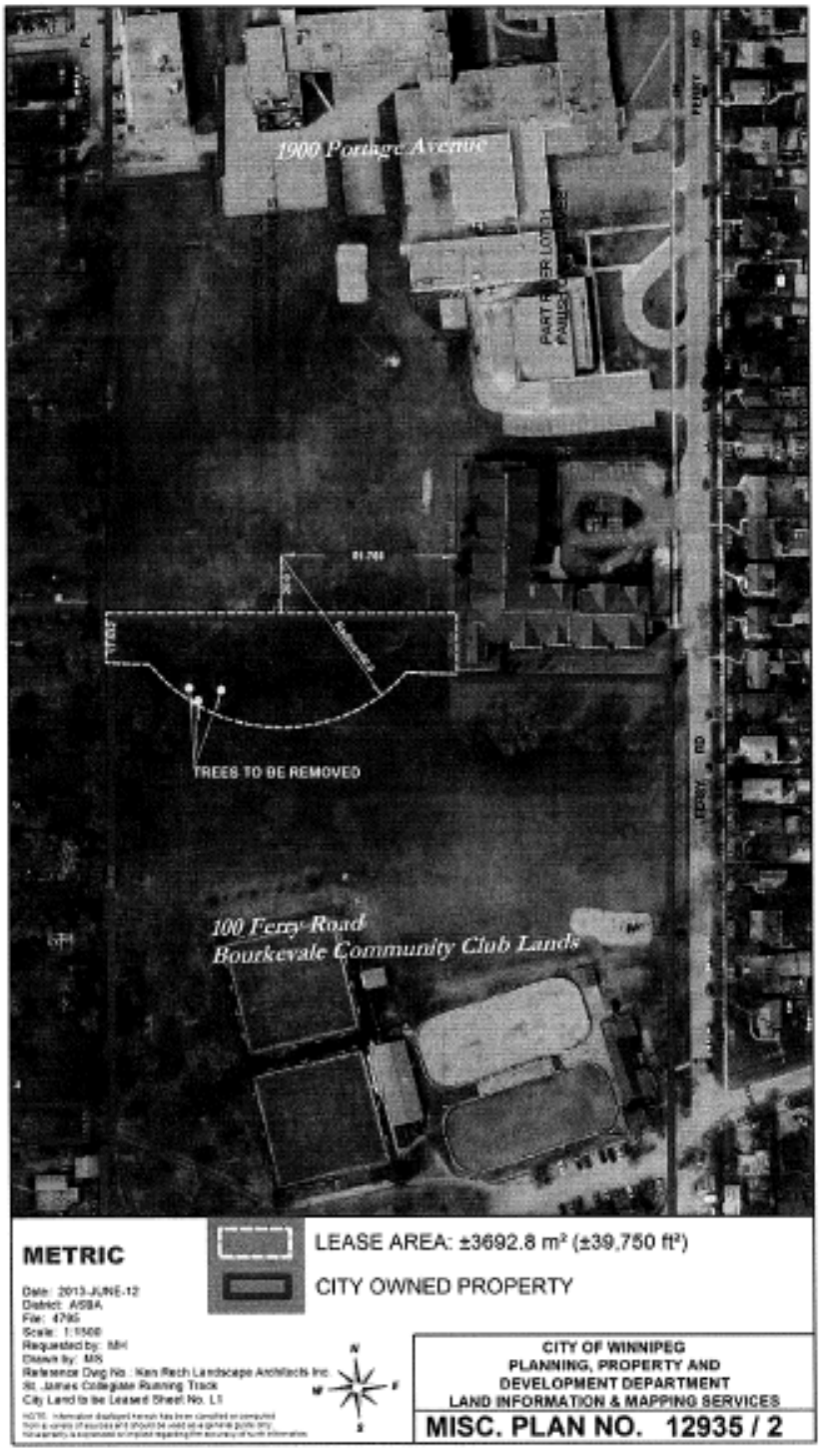
Bourkevale Community Club Lands
METRIC
LEASE AREA: ±3692.8 m² (±39,750 ft²)
CITY OWNED PROPERTY
Date: 2013-APR-16
District: ASBA
File: 4795
Scale: 1:1000
Requested by: MH
Drawn by: MS
Reference Dwg No. Ken Rech Landscape Architects Inc.
St. James Collegiate Running Track
City Land to be Leased Sheet No. L1
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 12935 / 1


1900 Portage Avenue
TREES TO BE REMOVED
100 Ferry Road
Bonkevale Community Club Lands
METRIC
LEASE AREA: ±3692.8 m² (±39,750 ft²)
CITY OWNED PROPERTY
CITY OF WINNIPEG
PLANNING, PROPERTY AND
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MISC. PLAN NO. 12935 / 2