Agenda – Council – July 15, 2015

Report – Standing Policy Committee on Property and Development – June 26, 2015

Item No. 8 Lease Agreement and Encroachment Agreement between the St. James-Assiniboia School Division and the City of Winnipeg

STANDING COMMITTEE RECOMMENDATION:

On July 8, 2015, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the following to Council:

1. That the proposed terms and conditions attached hereto and referred to as Schedule "B" for an encroachment agreement in favour of the St James-Assiniboia School Division, a registered not for profit organization, for the construction of a new entranceway to Brooklands School for the area identified "Encroachment Area" on Misc. Plan No. 14886 be approved.

2. That the City enter into an encroachment agreement as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

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

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Agenda – Council – July 15, 2015

Report – Standing Policy Committee on Property and Development – June 26, 2015

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 8, 2015, 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 26, 2015, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the following to the Executive Policy Committee and Council:

1. That the proposed terms and conditions attached hereto and referred to as Schedule "B" for an encroachment agreement in favour of the St James-Assiniboia School Division, a registered not for profit organization, for the construction of a new entranceway to Brooklands School for the area identified "Encroachment Area" on Misc. Plan No. 14886 be approved.

2. That the City enter into an encroachment agreement as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

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

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

STANDING COMMITTEE DECISION:

On June 26, 2015, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and approved the following:

Report – Standing Policy Committee on Property and Development – June 26, 2015

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

5. That the proposed terms and conditions attached hereto and referred to as Schedule "A" for a lease agreement in favour of the St James-Assiniboia School Division, a registered not for profit organization, for the construction of a new entranceway to Brooklands School for the area identified as "Lease Area" on Misc. Plan No. 14886 be approved.

6. That the City enter into a lease agreement as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

7. That the authority be delegated to the Director of Planning, Property and Development to negotiate and approve the final terms and conditions of the lease agreement and such other agreements as determined necessary by the City Solicitor/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/Director of Legal Services to protect the interests of the City.

8. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

ADMINISTRATIVE REPORT

Title: **Lease Agreement and Encroachment Agreement between the St James-Assiniboia School Division and the City of Winnipeg**

Issue: **Construction of a new entranceway to Brooklands School**

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

AUTHORIZATION

Author	Department Head	A/CFO	CAO/COO
B. Erickson	M. Pittet	P. Olafson	M. Jack

RECOMMENDATIONS

That the Standing Policy Committee on Property and Development recommend that Council approve the following:

1. That the proposed terms and conditions attached hereto and referred to as Schedule “B” for an encroachment agreement in favour of the St James-Assiniboia School Division, a registered not for profit organization, for the construction of a new entranceway to Brooklands School for the area identified “Encroachment Area” on Misc. Plan No. 14886 be approved.

2. That the City enter into an encroachment agreement as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

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

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

That, subject to Council approval of Recommendations 1 - 4, the Standing Policy Committee on Property and Development approve the following:

5. That the proposed terms and conditions attached hereto and referred to as Schedule “A” for a lease agreement in favour of the St James-Assiniboia School Division, a registered not for profit organization, for the construction of a new entranceway to Brooklands School for the area identified as “Lease Area” on Misc. Plan No. 14886 be approved.

6. That the City enter into a lease agreement as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing.

7. That the authority be delegated to the Director of Planning, Property and Development to negotiate and approve the final terms and conditions of the lease agreement and such other agreements as determined necessary by the City Solicitor/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/Director of Legal Services to protect the interests of the City.

8. 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 and right-of-way for which the Director of Planning, Property and Development has no authority.

In accordance with Encroachment By-law 692/74, General Regulations, 4. (1) d, which 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 this regard, the Planning, Property and Development Department has negotiated the proposed terms and conditions of a lease agreement and encroachment agreement as set out in attached Schedule "A" and Schedule "B" in favour of the St James-Assiniboia School Division for the use of City-owned lands and right-of-way located near 1950 Pacific Avenue and identified as "Lease Area" and "Encroachment Area" on attached Miscellaneous Plan No. 14886.

IMPLICATIONS OF THE RECOMMENDATIONS

1. The Planning, Property and Development Department has determined that there are no general, policy, regulatory, environmental or human resource implications to entering into a Lease Agreement and Encroachment Agreement as set out in the attached Proposed Terms and Conditions, Schedule "A" and Schedule "B".

2. The St James-Assiniboia School Division will be able to provide better accessibility to Brooklands School, which is also used as a polling station and requires easy accessibility by all residents of Winnipeg.

3. An annual continuing term with cancellation provision will easily allow for the St James-Assiniboia School Division to construct and landscape the new entranceway, while maintaining the lands. Should the City of Winnipeg require any of these lands or right-of-way for future projects, the ninety (90) day cancellation provision will allow for this.

4. The City will benefit from this agreement by formally issuing all snow removal and maintenance costs to the St James-Assiniboia School Division, increasing improvements to the Lease Area and Encroachment Area, and obtaining satisfactory insurance agreements from the SJSD, mitigating risk from the City of Winnipeg.

5. There will be no expenses incurred by the City as a result of this Agreement.

HISTORY

The City of Winnipeg closed down the Pacific Avenue thoroughfare in 1981, and the former street area has become the proposed Lease Area. There have been no plans documented regarding this parcel since this road closure.

The St James-Assiniboia School Division (SJSD) owns the adjacent properties on both sides of the Lease Area. The property to the south is the Brooklands School building, while the property to the north encompasses a variety of walking paths, play structures, baseball diamond and other school ground amenities.

To date, the St James-Assiniboia School Division has been using the middle parcel of City-owned lands as part of the school grounds and as an access to Brooklands School, while maintaining the lands without a formal agreement in place.

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 has reviewed the insurance requirements for this proposed lease and encroachment and their comments have been incorporated into the terms and conditions.

The Planning, Property and Development Department has negotiated proposed terms and conditions of an Encroachment Agreement and Lease Agreement in favour of St. James Assiniboia School Division.

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

FINANCIAL IMPACT

Financial Impact Statement

Date: June 1, 2015

Project Name:

First Year of Program **2015**

Proposed Lease and Encroachment Agreement to Allow for the construction of a new entranceway to Brooklands School

	2015	2016	2017	2018	2019
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	$ 7,250	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	8,876	1,126	1,126	1,126	1,126
Net Cost/(Benefit)	$ (1,626)	$ (1,126)	$ (1,126)	$ (1,126)	$ (1,126)
Less: Existing Budget Amounts	(1,626)	(1,126)	(1,126)	(1,126)	(1,126)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenue in 2015 consists of $1,126 in annual rent + $500 in one-time lease admin fees + $7,250 in one-time legal fees. Revenues from 2016 onward represents of annual rent. Direct costs in 2015 represents waived legal fees.

"Original signed by"

Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this report there was consultation with:

Legal Services (as to legal issues)
Risk Management (as to insurance requirements)
Water and Waste Department
Public Works Department

SUBMITTED BY

Department:	Planning, Property and Development Department
Division:	Municipal Accommodations
Prepared by:	Julian Roberts
Date:	June 3, 2015
PPD. File No.:	MA2015-127

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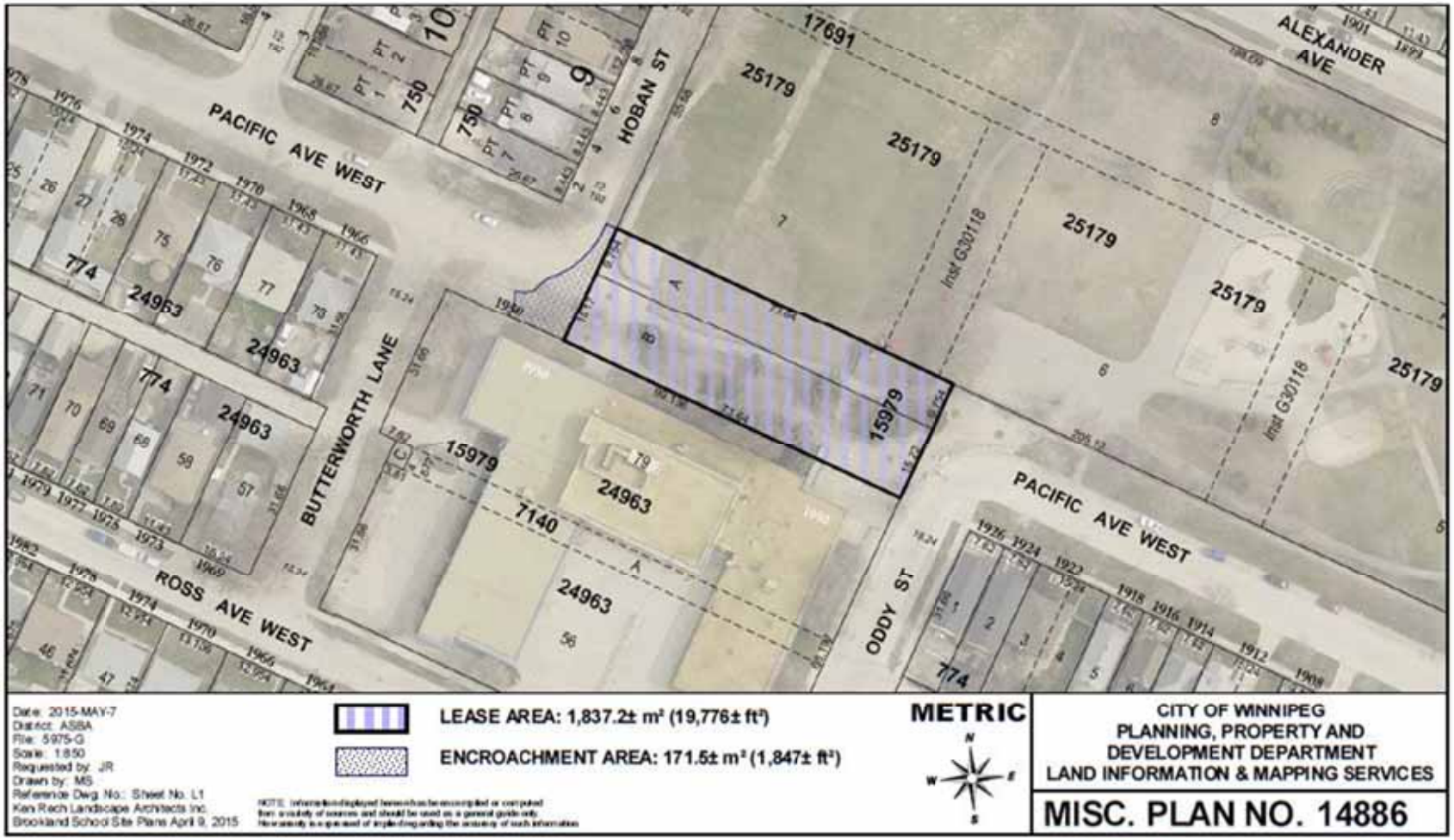
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HOBAN ST
ALEXANDER AVE
BUTTERWORTH LANE
ROSS AVE WEST
ODDY ST
PACIFIC AVE WEST
17691
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25179
25179
25179
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Inst G30118
Inst G30118
15979
15979
7140
24963
24963
24963
24963
774
774
774
750
750
10
9
LEASE AREA: 1,837.2± m² (19,776± ft²)
ENCROACHMENT AREA: 171.5± m² (1,847± ft²)
METRIC
N
W
E
S
Date: 2015-MAY-7
District: ASBA
File: 5975-G
Scale: 1:850
Requested by: JR
Drawn by: MS
Reference Dwg No.: Sheet No. L1
Ken Reich Landscape Architects Inc.
Brookland School Site Plans April 9, 2015
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14886

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR A LEASE AGREEMENT TO CONSTRUCT, LANDSCAPE, AND MAINTAIN A NEW ENTRANCE WAY TO BROOKLANDS SCHOOL, LOCATED AT 1950 PACIFIC AVENUE

Landlord:	The City of Winnipeg (hereinafter called the Landlord);
Tenant:	St James-Assiniboia School Division (hereinafter called the Tenant);
Use:	Construct and landscape a new entrance way to Brooklands School, while maintaining the Lease Area;
Area:	Shown and identified as "Lease Area: ±1837.2m² (±19,776ft²)" on Misc. Plan No. 14886, attached; (hereafter called the 'Lease Area');
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;
Rent:	$1.00 per annum, plus GST, payable yearly in advance;
Admin Fee:	A one-time fee of $250.00 plus GST;
Legal Fee:	A one-time Legal Services Administrative Fee in the amount of $4,350.00 payable prior to the commencement date and only payable in the event that the Licensee does not meet the criteria set out in the Non-Monetary Grant Policy details attached as Schedule "C" and "D";
Non-Profit Lease:	The Tenant has provided eligibility information required to apply for a Non-Monetary Real Estate Grant to Non-Profit Organizations and hereby declares that the information is true and accurate to the best of the Tenant's knowledge. Attached as **Schedule C.** The Landlord has reviewed the information and believes that it meets the Non-Monetary Grant criteria as per **Schedule D.**
Taxes:	The Tenant is to pay such taxes, rates, including local improvements and charges assessed for the Lease Area in the same manner as if the Lease Area and any improvements thereon had been entered on the assessment roll of the City as privately owned and subject to taxation; The Tenant is entitled to make application to the City pursuant to the provisions of The Municipal Assessment Act of Manitoba and City of Winnipeg Community Groups Occupying City-

Owned Facilities Bylaw No. 89/2005. If the application is granted and the resulting amendment to the Bylaw is approved, the Lease Area will be exempt from real property taxes and school taxes as of the date of such By-law approval. In the event that the Tenant loses its exemption, the Tenant shall, in accordance with the provisions of the above paragraph, pay all applicable real property tax and/or school tax.

Other Fees, Licenses, Taxes, Etc.: All license fees, realty and business tax, etc. which may be charged in respect of the use and occupation of the Lease Area;

Insurance: Tenant to indemnify and save harmless the Landlord from and against any and all claims for damages or injuries, including death, which may arise out of the use of the Lease Area by the Tenant;

The Tenant shall provide and maintain the following insurances at all times during the term of the agreement:

Commercial general liability insurance in the amount of at least $5,000,000 with The City of Winnipeg to be added as an additional insured. Policy to also include confirmation of cross liability and contractual liability clauses.

All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

Deductible shall be borne by the Tenant;

The Tenant shall not cancel, materially change, or cause any such policy or policies to lapse without a minimum thirty (30) days prior written notice to the Landlord;

The Tenant shall file with the Landlord an annual certificate of insurance in a form satisfactory to the City Solicitor;

The Landlord shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this agreement and for any subsequent renewals thereof, provided that the City shall give the Tenant reasonable notice and shall request reasonable change.

The Tenant shall ensure that any Contractor or Sub-contractor hired to perform the construction, maintenance work or repairs to the Lease Area shall provide a certificate of insurance evidencing commercial general liability insurance in the amount of not less than $2,000,000 per occurrence 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, products and completed operations, cross liability 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;
Development and Maintenance:	Unless otherwise specified herein, all improvements, development and construction on the Lease Area are to be performed at the sole cost, expense and effort of the Tenant, including but not limited to obtaining all permits required to develop, occupy and utilize the Lease Area for its intended use. All improvements, development and construction must not interfere with any water and waste infrastructure, or any other utilities, and are subject to prior written approval by the Director;
Tenant Responsibilities:	All maintenance and repair costs associated with the operation of the Lease Area shall be the sole responsibility of the Tenant;
Snow Clearing:	The Tenant shall be responsible for snow removal on the Lease Area. All costs, liabilities, and insurance requirements shall be borne by the Tenant;
Operating Costs:	Unless otherwise specified herein, the Tenant is to pay all operating costs, including but not limited to identification; the cost of any utilities, including but not limited to electricity, water and gas consumed on the Lease Area; the cost of cleaning, maintaining and servicing the Lease Area, including snow removal, garbage and waste collection and disposal;
Cancellation:	Ninety (90) days written notice or immediately upon default;
Conditions:	The Tenant understands and agrees that the Lease Area is leased on an "as is" basis.
	The Tenant will comply with all laws, by-laws and regulations of any federal, provincial, municipal or other applicable authority;
	The Tenant acknowledges and agrees that the Landlord has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, conditions or suitability of the Lease Area for any use or purpose, nor as to any environmental conditions which may exist;
	The Landlord shall have the right of access to the Lease Area 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 Lease

Area, 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 Lease Area, without being responsible for any damage occasioned thereby.

The Landlord reserves the right for MTS Communications Inc., Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Lease Area at any time without notice to the Tenant for maintenance, repair, or installation of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby. Any removal or relocation of existing facilities as a result of the proposed Tenant will be at the expense of the Tenant. Prior to any digging or excavation, Manitoba Hydro and/or Centra Gas Manitoba Inc. advise the Tenant to contact the Call-Before-You Dig line at 204-480-1212;

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

The Tenant shall not assign this agreement or sublet the Lease Area without the prior written consent of the Landlord. And further the Tenant acknowledges and agrees that upon its making application for such consent by the Director, the Tenant shall pay to the Landlord a non-refundable administrative fee of Two Hundred and Fifty ($250.00), plus applicable Goods and Services Tax;

The Tenant shall, at its own expense, maintain the Lease Area in a safe, clean and tidy condition to the satisfaction of the Director;

The Tenant shall release the Landlord from and against any and all claims for damages or injuries, including death that may arise from the use of the Lease Area by the Tenant. This provision shall survive any termination or expiration of this Agreement;

That if at any time during the term the Landlord's use or requirements for the Lease Area reasonably necessitate the relocation and/or modification and/or removal of the Sewer, the Tenant shall be responsible to do all things necessary to relocate and/or modify and/or remove the Sewer as required by the Landlord and to pay all costs and expenses associated therewith;

In the event of cancellation, termination or expiration of the agreement, the Tenant shall remove its property and leave the Lease Area in a condition satisfactory to the Landlord. Should

the Tenant default in so doing, the Landlord may remove the Tenant's property and restore the Lease Area at the sole risk and expense of the Tenant;

That all applicable permits be obtained prior to any development;

The proposed terms and conditions of the proposed Lease 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;

The Tenant shall within six (6) months enter into a formal agreement with the Landlord embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the Director of Legal Services deems necessary and in a form satisfactory to the Director of Legal Services.

All terms and conditions contained herein, are subject to the approval of Council, or its delegated authority, and are not binding until such time as that approval is obtained.

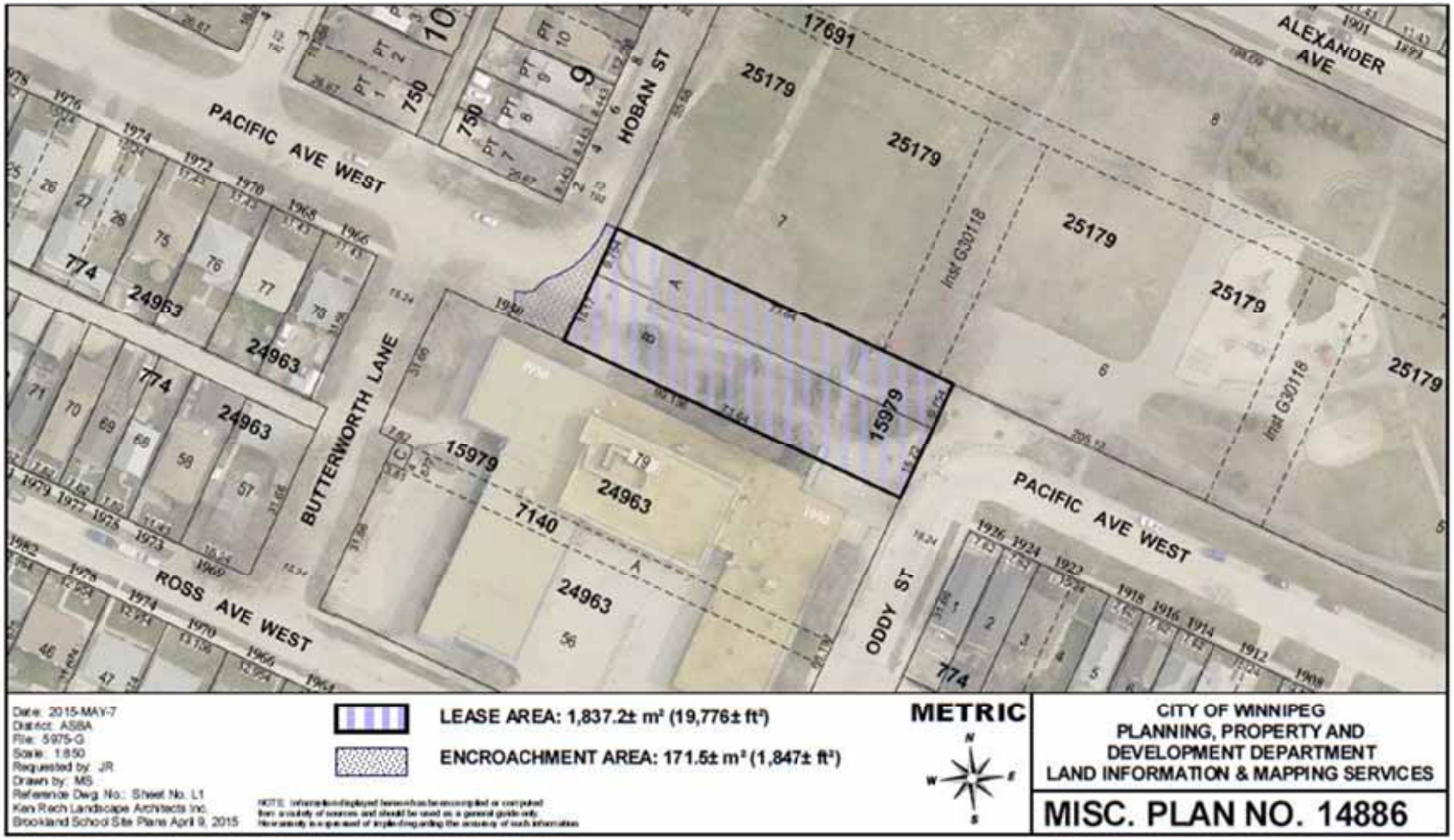
I, Mike Friesen, AM DULY AUTHORIZED TO ACT ON BEHALF OF THE ST JAMES ASSINIBOIA SCHOOL DIVISION, HEREBY AGREE TO ENTER INTO A LEASE AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS 'LEASE AREA' ON THE ATTACHED MISC. PLAN NO. 14886 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

ST JAMES ASSINIBOIA SCHOOL DIVISION:

Per: Mike Friesen — May 26, 2015
DATE

Mike Friesen
NAME

Secretary Treasurer
TITLE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HOBAN ST
ALEXANDER AVE
BUTTERWORTH LANE
ROSS AVE WEST
ODDY ST
PACIFIC AVE WEST
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Date: 2015-MAY-7
District: ASBA
File: 5975-G
Scale: 1:850
Requested by: JR
Drawn by: MS
Reference Dwg No.: Sheet No. L1
Ken Rech Landscape Architects Inc.
Brookland School Site Plans April 9, 2015
LEASE AREA: 1,837.2± m² (19,776± ft²)
ENCROACHMENT AREA: 171.5± m² (1,847± ft²)
METRIC
N
W
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S
CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14886

SCHEDULE B

PROPOSED TERMS AND CONDITIONS FOR AN ENCROACHMENT AGREEMENT TO CONSTRUCT, LANDSCAPE, AND MAINTAIN A NEW ENTRANCE WAY TO BROOKLANDS SCHOOL, LOCATED AT 1950 PACIFIC AVENUE AND ENCROACHING ONTO THE ADJACENT RIGHT OF WAY

Licensee:	St James-Assiniboia School Division (hereinafter called the Licensee);
Use:	Construct and landscape a new entrance way to Brooklands School, while maintaining the encroachment area;
Area:	Shown and identified as "Encroachment Area: ±171.5m² (±1,847ft²)" on Misc. Plan No. 14886, 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:	$1125.00 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;
Admin Fee:	A one-time fee of $250.00 plus GST;
Legal Fee:	A one-time Legal Services Administrative Fee in the amount of $2,900.00 payable prior to the commencement date and only payable in the event that the Licensee does not meet the criteria set out in the Non-Monetary Grant Policy details attached as Schedule "C" and "D";
Non-Profit Lease:	The Licensee has provided eligibility information required to apply for a Non-Monetary Real Estate Grant to Non-Profit Organizations and hereby declares that the information is true and accurate to the best of the Licensee's knowledge. Attached as **Schedule C.** The City of Winnipeg has reviewed the information and believes that it meets the Non-Monetary Grant criteria as per **Schedule D.**
Taxes:	The Licensee is to pay such taxes, rates, including local improvements and charges assessed for the Lands in the same manner as if the Lands and any improvements thereon had been

entered on the assessment roll of the City as privately owned and subject to taxation;

The Licensee is entitled to make application to the City pursuant to the provisions of The Municipal Assessment Act of Manitoba and City of Winnipeg Community Groups Occupying City-Owned Facilities Bylaw No. 89/2005. If the application is granted and the resulting amendment to the Bylaw is approved, the Lands will be exempt from real property taxes and school taxes as of the date of such By-law approval. In the event that the Licensee loses its exemption, the Licensee shall, in accordance with the provisions of the above paragraph, pay all applicable real property tax and/or school tax.

Other Fees, Licenses, Taxes, Etc.: All license fees, realty and business tax, etc. which may be charged in respect of the use and occupation of the Lands;

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 Lands by the Licensee;

The Licensee shall provide and maintain the following insurances at all times during the term of the agreement:

Commercial general liability insurance in the amount of at least $5,000,000 with The City of Winnipeg to be added as an additional insured. Policy to also include confirmation of cross liability and contractual liability clauses.

All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

Deductible shall be borne by the Licensee;

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

The Licensee 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 this agreement and for any subsequent renewals thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change.

The Licensee shall ensure that any Contractor or Sub-contractor hired to perform the construction, maintenance work or repairs to the Lands shall provide a certificate of insurance evidencing commercial general liability insurance in the amount of not less

	than $2,000,000 per occurrence 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, products and completed operations, cross liability 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;
Development and Maintenance:	Unless otherwise specified herein, all improvements, development and construction on the Lands are to 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 Lands for its intended use. All improvements, development and construction must not interfere with any water and waste infrastructure, or any other utilities, and are subject to prior written approval by the Director;
Licensee Responsibilities:	All maintenance and repair costs associated with the operation of the Lands shall be the sole responsibility of the Licensee;
Snow Clearing:	The Licensee shall be responsible for snow removal on the Lands, including the right-of-way from Butterworth Lane to the north limit of the proposed Encroachment Area. All costs, liabilities, and insurance requirements shall be borne by the Licensee;
Operating Costs:	Unless otherwise specified herein, the Licensee is to pay all operating costs, including but not limited to identification; the cost of any utilities, including but not limited to electricity, water and gas consumed on the Lands; the cost of cleaning, maintaining and servicing the Lands, including snow removal, garbage and waste collection and disposal;
Cancellation:	Ninety (90) days written notice or immediately upon default;
Conditions:	The Licensee acknowledges and agrees that the portion of the lands that are identified as "ENCROACHMENT AREA: $\pm$171.5m^2 (1,847ft^2)" is located within a right-of-way 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 Licensee will comply with all laws, by-laws and regulations of any federal, provincial, municipal or other applicable authority;

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, conditions or suitability of the Lands for any use or purpose, nor as to any environmental conditions which may exist;

The City shall have the right of access to the Lands 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 Lands, 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 Lands, without being responsible for any damage occasioned thereby.

The City reserves the right for MTS Communications Inc., Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Lands at any time without notice to the Licensee for maintenance, repair, or installation of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby. 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 204-480-1212;

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. And further the Licensee acknowledges and agrees that upon its making application for such consent by the Director, the Licensee shall pay to the City a non-refundable administrative fee of Two Hundred and Fifty ($250.00), plus applicable Goods and Services Tax;

The Licensee shall, at its own expense, maintain the Lands in a safe, clean and tidy condition to the satisfaction of the Director;

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. This provision shall survive any termination or expiration of this Agreement;

That if at any time during the term the City's use or requirements for the right-of-way reasonably necessitate the relocation and/or modification and/or removal of the Sewer, the Licensee shall be responsible to do all things necessary to relocate and/or modify and/or remove the Sewer as required by the City and to pay all costs and expenses associated therewith;

In the event of cancellation, termination or expiration of the agreement, the Licensee shall remove its property and leave the Lands in a condition satisfactory to the Director. Should the Licensee default in so doing, the City may remove the Licensee's property and restore the Lands at the sole risk and expense of the Licensee;

That all applicable permits be obtained prior to any development;

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;

The Licensee shall within six (6) months enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the Director of Legal Services deems necessary and in a form satisfactory to the Director of Legal Services.

All terms and conditions contained herein, are subject to the approval of Council, or its delegated authority, and are not binding until such time as that approval is obtained.

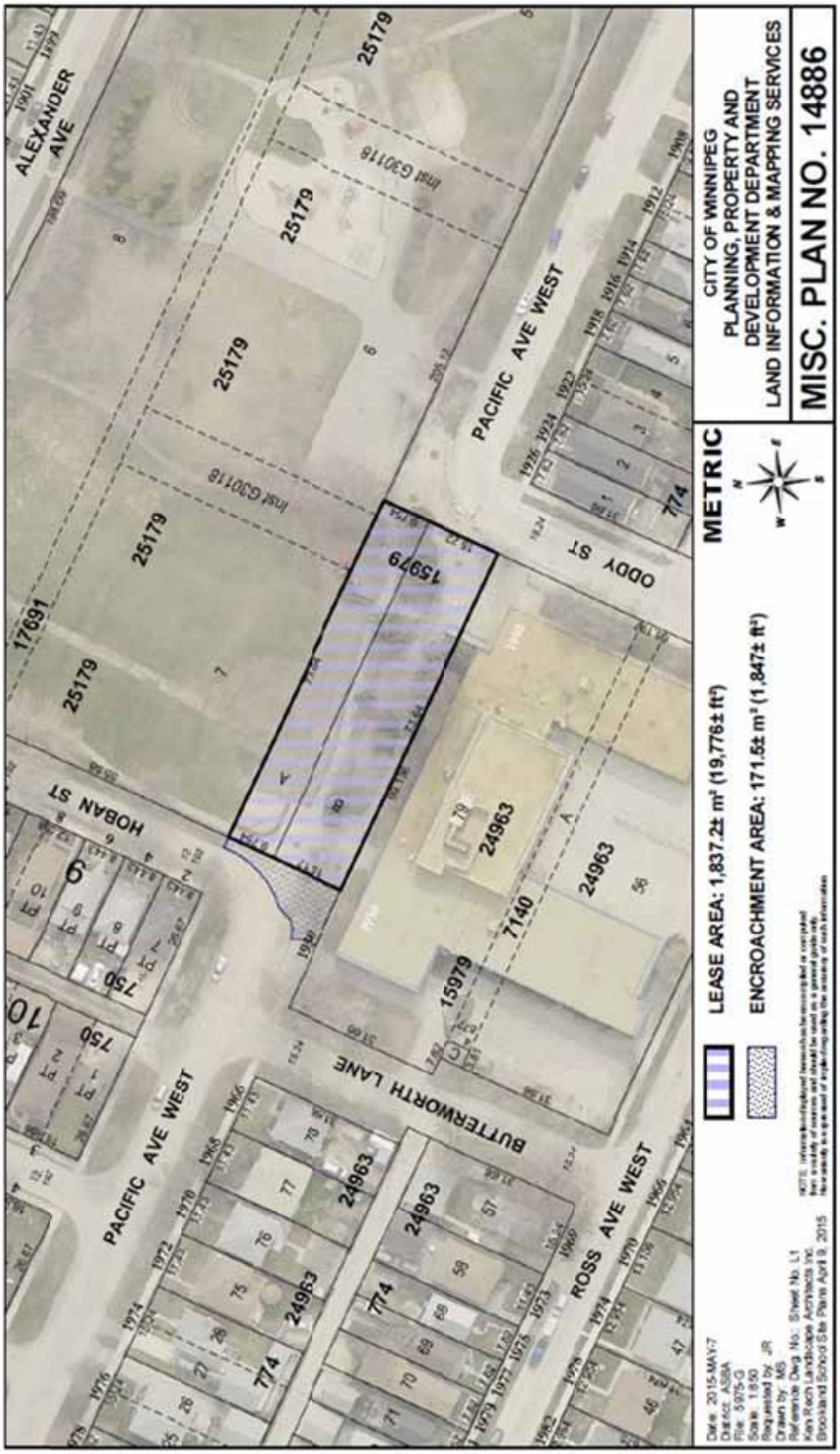
I, Mike Friesen, AM DULY AUTHORIZED TO ACT ON BEHALF OF THE ST JAMES ASSINIBOIA SCHOOL DIVISION, HEREBY AGREE TO ENTER INTO AN ENCROACHMENT AGREEMENT WITH THE CITY OF WINNIPEG FOR THE USE OF THE PROPERTY IDENTIFIED AS 'ENCROACHMENT AREA' ON THE ATTACHED MISC. PLAN NO. 14886 AND IN ACCORDANCE WITH THE PROPOSED TERMS AND CONDITIONS AS OUTLINED HEREIN.

ST JAMES ASSINIBOIA SCHOOL DIVISION:

Per: Mike Friesen — May 26/15

Mike Friesen / Secretary Treasurer
NAME / TITLE

DATE


CITY OF WINNIPEG
PLANNING, PROPERTY AND
DEVELOPMENT DEPARTMENT
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 14886
METRIC
LEASE AREA: 1,837.2± m² (19,776± ft²)
ENCROACHMENT AREA: 171.5± m² (1,847± ft²)
ALEXANDER AVE
PACIFIC AVE WEST
ODDY ST
HOBAN ST
BUTTERWORTH LANE
ROSS AVE WEST
Inst G30118
25179
15979
24963
7140
774
750
17691

Schedule C

Criteria for Non-Profit Eligibility

Organization: St James-Assiniboia School Division
Contact Person: Mike Friesen
Mailing Address: 678 Moray Street
Phone Number(s): 204-888-7085
Email: mfriesen@sjsd.net

In accordance with City Policy, information on the following six criteria must be provided for the consideration of a lease agreement between a non-profit organization and the City of Winnipeg:

1. **Demonstrate that the facility is operated in its entirety by a non-profit organization for non-profit use. All subsidies or grants and corresponding revenues must be clearly identified.**

   The St James-Assiniboia School Division is a public school system, and is a non-profit registered charity (#0913632-20).

2. **Demonstrate how the organization provides for activities which are compatible with the City's needs.**

   The St James-Assiniboia School Division provides public education services for the residents of Winnipeg.

3. **Demonstrate how the organization provides facilities for which there is a current and projected need in that location.**

   The St James-Assiniboia School Division operates education facilities for the residents of Winnipeg.

4. **Demonstrate how the organization provides reasonable access to all Winnipeg residents without discrimination.**

   The St James-Assiniboia School Division is a public education system that offers services to all Winnipeg residents without discrimination.

5. **Demonstrate that the organization provides access without the charging of initiation fees or other costs which are incompatible with like facilities or organizations.**

   The St James-Assiniboia School Division operates publically without the charging of initiation fees or other costs with like facilities or organizations.

6. **Provide evidence of available funding and commitment to complete the project and assurance that no ongoing operating subsidies from the City will be required over the life of the development.**

   The St James-Assiniboia School Division has an operating budget of $102,544,626 with operating reserves of $4,630,827 and capital reserves of $5,626,072.

Schedule D

Eligibility Criteria for Non-Monetary Real Estate Grants to Non-Profit Organizations

	Criteria	Meets Criteria	Does NOT Meet Criteria	Notes
1	The organization must provide a facility operated in its entirety by a non-profit organization for non-profit uses.	✓		The St James-Assiniboia School Division is a public school system, and is a registered non-profit (0913632-20).
2	The organization must provide for activities which are compatible with the City's needs.	✓		The St James-Assiniboia School Division provides public education services for the residents of Winnipeg.
3	The organization must provide facilities for which there is a current and projected need in that location.	✓		The St James-Assiniboia School Division provides public education facilities for the residents of Winnipeg.
4	The organization must provide reasonable access to all Winnipeg residents without discrimination.	✓		The St James-Assiniboia School Division is a public education system which offers services to all residents of Winnipeg without discrimination.
5	The organization must provide access without the charging of initiation fees, membership fees or other costs which are incompatible with like facilities or organizations.	✓		The St James-Assiniboia School Division operates publically without the charging of initiation fees or other costs with like facilities or organizations.
6	The organization must provide evidence of available funding and commitment to complete the project and assurance that no ongoing subsidies from the City will be required over the life of the development.	✓		Correspondence from the Secretary Treasurer with the St James-Assiniboia School Division indicate they have an operating budget of $102,544,626 with operating reserves of $4,630,827 and capital reserves of $5,626,072.
General Remarks:				

Written by: Julian Roberts **Date:** May 26 2015