Minute No. 578
Report - Standing Policy Committee on Property and Development – September 13, 2011

Item No. 7 Encroachment Agreement - Portage Trail Soccer Club Inc.

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 an encroachment agreement between the City and Portage Trail Soccer Club Inc. be approved subject to the terms and conditions 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 – September 13, 2011

DECISION MAKING HISTORY:

Moved by Councillor Browaty,

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

Carried

STANDING COMMITTEE RECOMMENDATION:

On September 13, 2011, 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 an Encroachment Agreement between Portage Trail Soccer Club Inc. and the City of Winnipeg**

Issue: **For the use of City-owned land and Part of Public Road Plan No. 10187; located on west side of Sturgeon Road, south of Saskatchewan Avenue and shown as "Leased Area" on Misc Plan No. 13949/2**

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

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Thorgrimson	D. Joshi	Paul Olafson Acting CFO	Alex Robinson Deputy CAO

RECOMMENDATIONS

1. That the proposed terms and conditions for an encroachment agreement between the City and Portage Trail Soccer Club Inc. 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 an encroachment in favour of Portage Trail Soccer Club Inc. for the use of the City-owned lands and part of Public Road Plan No. 10187 identified as "Leased Area" on Misc. Plan No. 13949/2 as attached. Council has the authority to permit or license the use of a public right of way.

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. 13949/2.

Portage Trail Soccer Club Inc. will have a permanent field that will provide ample room to serve its competitive and training needs for many years to come.

The proposed encroachment agreement will formalize the terms and conditions for the use of the "Leased Area" as outlined on Misc. Plan 13949/2.

HISTORY

Portage Trail Soccer Club Inc. is an incorporated non-profit organization operating a competitive youth soccer program within the boundaries of the St. Charles Soccer District. Portage Trail offers Premier and Premier-Development soccer programs for competitive players from 13 to 18 years old.

An application was submitted to the City's Zoning and Permits Branch for the use of City-owned land shown as "Leased Area" on Misc Plan No. 13949/2 for the purpose of amateur outdoor soccer and related activities.

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 Encroachment Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement **Date:** July 28, 2011

Project Name: **First Year of Program 2011**

Proposed Encroachment Agreement with the Portage Trail Soccer Club Inc. for the use of City-owned lands and part of Public Road Plan No. 10187 shown as "Leased Area" on Misc Plan 13949/2

	2011	2012	2013	2014	2015
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	501	501	501	501	-
Net Cost/(Benefit)	$ (501)	$ (501)	$ (501)	$ (501)	$ -
Less: Existing Budget Amounts	(501)	(501)	(501)	(501)	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues in 2011-2014 consist of the $1 annual rental amount, plus an annual lease admin fee of $500.

original signed by
Karen Ayotte,
Acting Manager of Finance

CONSULTATION

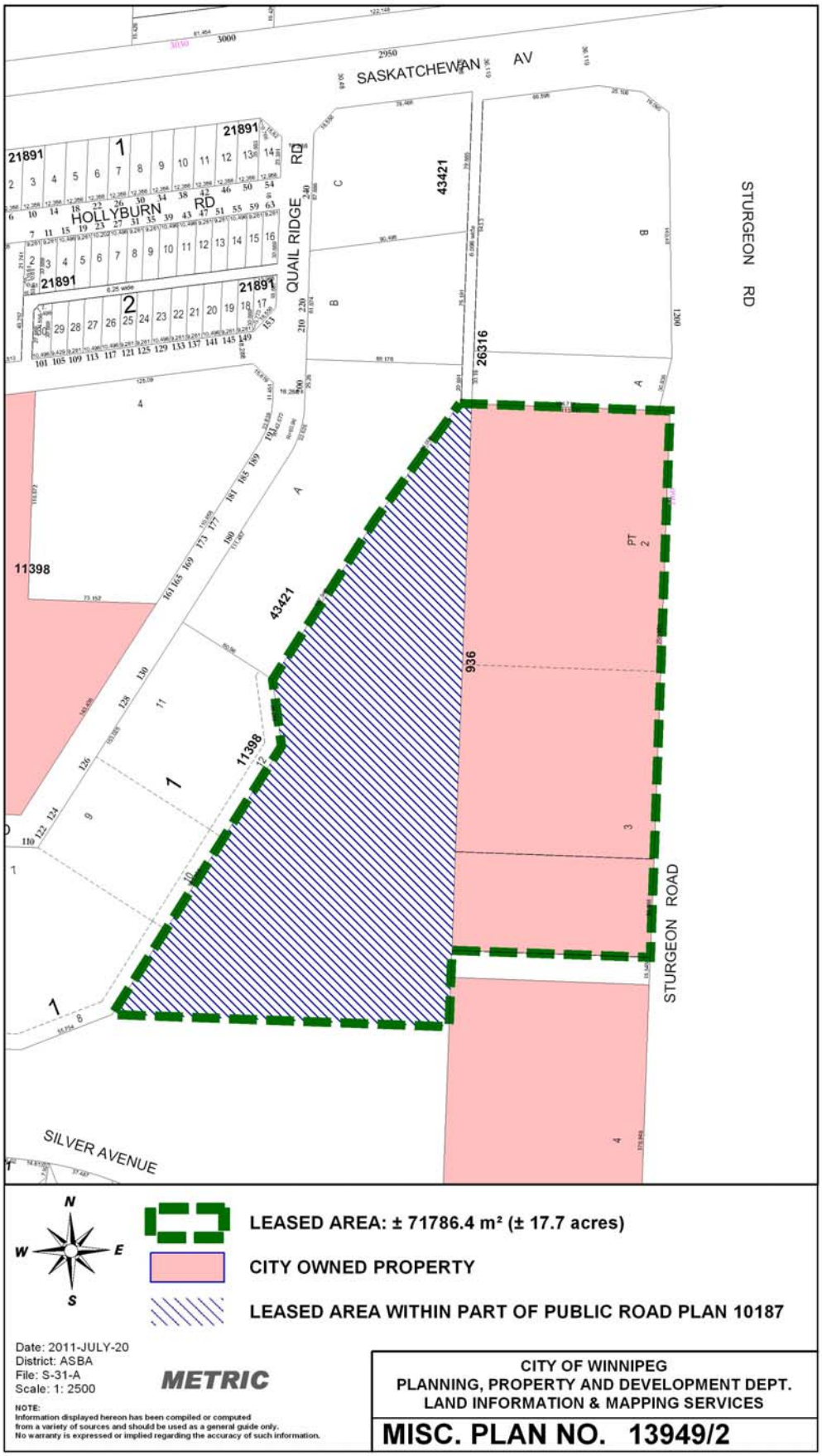
In preparing this report there was consultation with:

Corporate Finance
Legal Services Department
Public Works Department
Water and Waste
Assessment and Taxation

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Real Estate
Prepared by:	Marlene Haderer
Date:	August 4, 2011
File No.	S-31-A

v:\marlene haderer\encroachments\s-31-a portage trail soccer club inc\(mlh) portage trail soccer club inc..doc


SASKATCHEWAN AV
HOLLYBURN RD
QUAIL RIDGE RD
STURGEON RD
STURGEON ROAD
SILVER AVENUE
21891
43421
26316
11398
936
PT 2
N
W
E
S
LEASED AREA: ± 71786.4 m² (± 17.7 acres)
CITY OWNED PROPERTY
LEASED AREA WITHIN PART OF PUBLIC ROAD PLAN 10187
Date: 2011-JULY-20
District: ASBA
File: S-31-A
Scale: 1: 2500
METRIC
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.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13949/2


SASKATCHEWAN AV
HOLLYBURN RD
QUAIL RIDGE RD
STURGEON RD
STURGEON ROAD
SILVER AVENUE
RD
21891
43421
26316
11398
936
N
W
E
S
LEASED AREA: ± 71786.4 m² (± 17.7 acres)
CITY OWNED PROPERTY
LEASED AREA WITHIN PART OF PUBLIC ROAD PLAN 10187
Date: 2011-JULY-28
District: ASBA
File: S-31-A
Scale: 1: 2500
METRIC
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.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 13949/2

Schedule "A"

Proposed Terms and Conditions for Lease Agreement between the City of Winnipeg and the Portage Trails Soccer Club Inc.

Landlord:	City of Winnipeg
Tenant:	Portage Trail Soccer Club Inc.
Leased Lands:	Shown as "Leased Area" on Misc. Plan No. 13949; (herein after referred to as "Leased Lands");
Use:	Amateur outdoor soccer and related activities;
Term:	Three (3) years commencing September 15, 2011 and terminating September 14, 2014;
Rent:	$1.00 per annum plus GST and an annual administration fee of $500.00 plus applicable GST.
Realty Taxes:	Tenant 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 subject property. The Tenant is entitled to make application to the Assessment and Taxation Department of the City pursuant to the provisions of the Municipal Assessment Act of Manitoba and the City of Winnipeg Community Groups Occupying City-Owned Facilities By-law No. 89/2005, and if they meet the criteria set forth in the By-law and such application is granted and the resulting proposed amendment to the herein mentioned By-law is approved by Council, the Leased Lands will be exempt from real property taxes and school taxes levied by the City as of the date of such By-law approval. In the event that the Leased Lands lose the exemption thereafter from real property taxes and/or school taxes levied by the City, the Tenant shall become liable for these taxes.
Cancellation:	The agreement is subject to cancellation by either party, for any reason by giving 180 days written notice; At the termination or cancellation of the agreement the Tenant shall remove its property at its sole cost upon the written direction of the Director of Planning, Property and Development, (hereinafter referred to as "the Director"); Not withstanding the forfeiture or termination of this agreement in any manner herein provided for, the Tenant shall be and remain liable to the

Schedule "A"

City for all payments due and obligations and liabilities to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeitures or termination and for the fulfillment of all obligations on the part of the Tenant to be observed and performed upon after the said termination;

Insurance:

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

Commercial general liability insurance including but not limited to protection for claims of bodily injury and property damage, personal and advertising injury liability and product and completed operations liability in the inclusive amount of at least two million dollars ($2,000,000.00) per occurrence with a minimum $5,000,000 general aggregate. The City of Winnipeg shall be covered as an additional insured. Such liability policy must also contain a cross-liability or severability of interest clause, contractual liability, employees as additional insureds, tenant'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.

A broad form property insurance policy for the full replacement cost insuring contents, mobile equipment and Tenant's improvements;

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 dollars ($2,000,000.00) to remain in place at all times during the full term of the Lease Agreement; such insurance may be met through the commercial general liability cover where applicable;

All property policies written on behalf of the Tenant shall contain a waiver of any subrogation right which the Tenant'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;

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

Deductibles shall be borne by the Tenant;

Schedule "A"

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

The Tenant 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 Tenant 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 to this Lease Agreement and for any subsequent renewals thereof, provided that the City shall give the Tenant reasonable notice and shall request reasonable change.

Tenant Responsibilities:

To use the Leased Lands for athletic field purposes only, and not to use or permit the Leased Lands or any part thereof to be used for any other purpose without the written permission of the Director;

The Tenant acknowledges and agrees to include the St. Charles Soccer District in their field allocation during the term of the Lease;

No assignment without written consent, no sub-letting, no placement of signage or advertising and no leasehold improvements or permanent structures without prior written approval from the Director;

Tenant acknowledges and agrees to be responsible for field line painting/marking;

The Tenant must provide and maintain their own portable toilets within the leased area. The maintenance standards, quantity and the location of the portable toilets are to be approved by the Director of Parks and Open Spaces;

The Tenant acknowledges and agrees to assist with athletic field maintenance by top dressing and seeding worn areas, and perform minor repairs to the fields that do not require the use of special equipment;

The City shall have the right of access to the Leased 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:

- To view the state of repair of the leased area, and the Tenant shall repair according to notice in writing given by the City. If

Schedule "A"

the Tenant fails to repair according to the notice, the City may do such work at the sole cost and expense of the Tenant, or

- For the purpose of maintaining or repairing its utilities in or near to the Leased Lands at any time with or without equipment, for the purpose of renewing, altering or repairing its facilities including the right to exclude all others for as long as may be necessary to carry out such work; or
- For any other purpose, with being responsible for any damage occasioned thereby.

Tenant shall comply with all applicable statutes, by-laws, ordinances and regulations pertaining to those of the premises as herein contemplated; In the event of the Tenant 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 lease is subject to immediate cancellation by the City;

Tenant shall not file any caveat or other encumbrance against the Leased Lands;

The Tenant acknowledges and agrees that fields that are closed for restoration activities are properly signed as such and temporary snow fencing is erected during the construction and grow-in period;

Special Conditions: Provided that the Landlord provides ninety (90) days written notice to the Tenant, the Landlord shall be provided with unfettered access and possession of the Leased Lands at any time during the term of the Lease for the purpose of hosting Local, National, International Sporting Events and for Winnipeg Youth Soccer Association (WYSA) events or playoff games, without any compensation to the Tenant;

City Responsibility: To be responsible for weed control and other herbicides required in maintaining the fields;

To be responsible for major repairs to the fields that requires the use of equipment;

The City to provide grass cutting in accordance with the Public Works Department regular grass cutting cycle;

Schedule "A"

Tenant shall enter into a formal agreement with the City embodying the foregoing terms and conditions and such other terms and conditions as the City Solicitor/Director of Legal Services deems necessary and in form satisfactory to the City Solicitor/Director of Legal Services.

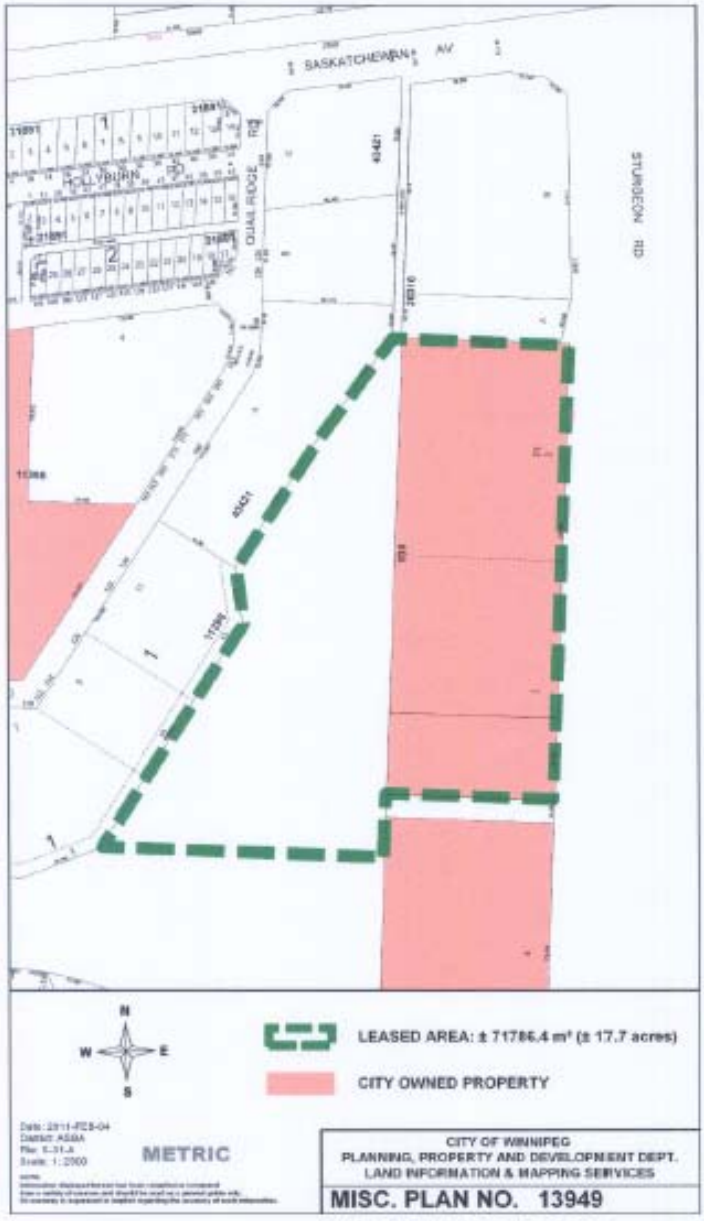
MR. BEN DIAMOND, on behalf of the Portage Trail Soccer Club Inc., hereby acknowledge and agree to enter into a Lease Agreement with the City of Winnipeg for the use of the area identified as "Leased Area" on Misc. Plan No. 13949 attached in accordance with the terms and conditions as outlined herein.

Mr. Ben Diamond

June 29th 2011
Date

V:\Peter Johannsson\S - 31 - A Portage Trail Soccer Club\Terms conditions - Portage Trail Soccer Club (2).doc

Schedule "A"



Page 6 of 7

Schedule "A"



Date: 2011-FEB-04
District: ASBA
File: S-31-A
Scale: 1: 2500

METRIC

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.

CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES

MISC. PLAN NO. 13949