SCHEDULE E

Winnipeg

CITY OF WINNIPEG POLICY NO. XXX-XXX

POLICY TITLE *Leasing and Licensing of Property*	**ADOPTED BY** *City Council*	**EFFECTIVE DATE** *XXXXXXXX*
ORIGIN / AUTHORITY *City Council*	**CITY POLICY NO**	**MOST RECENT CONSOLIDATION** *XXX-XXX*

1. Purpose:

The requirements to lease/license City-owned property or Non-City-owned property, including negotiating the terms and conditions, and the approval authority for a lease/licence are contained herein.

2. Definitions:

"Appraised Value" means the fair market value of a particular property as determined by a designated real estate appraiser who is a member in good standing of the Appraisal Institute of Canada;

"Base Rent" means the annual rental value of a lease paid by a tenant to a landlord in exchange for occupancy and does not include operating costs, taxes or tenant improvements;

"Broker" means a registered real estate broker that is licensed to buy, sell and lease real estate;

"CAO" means the Chief Administrative Officer of the City of Winnipeg;

"Charter" means The City of Winnipeg Charter, S.M. 2002, c. 39, as amended from time to time;

"Circulation" or **"Circulate"**, in respect of the proposed lease or licence of City-owned real property, means a canvass of affected internal and external stakeholders for comments relating to the proposed lease or licence;

"City" means the municipal corporation of The City of Winnipeg, continued under section 8 of the Charter;

"City Property" means all or a portion of the interests, benefits and rights inherent in the ownership of physical real estate that is owned by the City;

"Commission" means the payment of a fee to a registered real estate broker who closes the lease or licence of City-owned property;

"Council" means the municipal Council of the City;

"Designated Committee" means the committee of Council responsible for providing policy advice to Council in respect of planning and land use, which, on the date this policy is enacted, is the Standing Policy Committee on Property and Development, Heritage and Downtown Development;

"**Designated Non-Profit Building"** means any City-owned building identified in Appendix A as amended from time-to-time;

"Direct Lease or **Direct Licence"** means a lease or licence of City-owned property which has not been marketed to the general public;

"Director of Assets and Project Management" means the director of the City department responsible for asset management, which, on the date this policy is enacted, is the Director of the City's Assets and Project Management Department;

"Director of PPD" means the director of the City department responsible for planning and land use, which, on the date this policy is enacted, is the Director of the City's Planning, Property and Development Department;

"Economic Development Transaction" means the lease or licence of City-owned property for a development proposal, where a minimum of $1.0 million in Provincial or Federal Funding, or combination thereof, has been secured for the said development;

"Encroachment" means a building, structure or object, or any portion thereof, to which Encroachment By-law No. 12/2019 applies, as amended from time-to-time;

"Fees and Charges Schedule" means the annual public list of fees, charges, rates or rents charged for a variety of City services;

"General Revenue Fund" means the City's accounting fund where revenue resulting from the leasing or licencing of City-owned property is recorded;

"Landlord" means the owner, or agent acting on behalf of the owner, of real property who leases that property or a portion thereof to a tenant and for the purposes of this policy includes a licensor and a lessor;

"Landscape and Maintenance Agreement" means an agreement where the City leases or licenses land to an adjacent owner for the purpose of expanding the adjacent owner's rear or side yard, and where the adjacent owner is not permitted to erect any structures except for fencing;

“Lease” means an agreement between a landlord and tenant or a lessor and lessee, which may include the City acting as the landlord or lessor or acting as the tenant or lessee, for the exclusive use of property for a specified period of time, and represents an interest in land;

“Licence” means an agreement between a landlord and a tenant, which may include the City acting as the landlord or acting as the tenant, and does not represent an interest in land or an exclusive use;

“Market Rent” means the rental income that a property would probably command in the open market, and includes any amount listed in the City’s Fees and Charges Schedule;

“Marketed” means the public advertisement for the lease or license of City-owned property;

“Municipal Accommodations Lease” or **“Municipal Accommodations Licence”** means any lease or licence to which the City is a party as the tenant;

“Non-City Property” means all or a portion of the interests, benefits and rights inherent in the ownership of physical real estate that is not owned by the City;

“Non-Profit Organization” means an organization that does not generate a profit that is returned to shareholders, partners or individuals, but does not include golf courses;

“Operating Costs” means the annual costs to operate a building which may include, but is not limited to, utilities, taxes, repairs and maintenance, insurance, management fees and such other annual fees as required to operate a building but does not include tenant improvements;

“Parkland” means park property as defined in the Park By-law No. 85/2009, but including golf courses;

“Property Management Lease or **“Property Management Licence”** means any lease or licence to which the City is a party as the lessor, licensor or landlord;

“Property Management Short-Term Use Agreement” means a licence for a maximum length of one year in respect of a City-owned property except any City-owned property for which a licence may be obtained through the City’s online booking systems;

“Public Service” means the employees of the City but does not include elected officials;

“Real Estate Transaction Management Framework” means tools, directives, checklists and practices implemented by the Public Service for real estate transactions;

“Stakeholder” means any City department, person, corporation, organization or agency that has a general or specific interest in City-owned Property that includes, but is not limited to, utility agencies, crown corporations, government agencies, the Provincial Government or the Federal Government;

“Tenant” means an individual, group, corporation or partnership, etc. who leases property from a Landlord and for the purposes of this policy includes a lessee and licensee;

“Tenant Improvements” means property alterations completed to the leased space, the cost of which may not be reflected in the base rent;

“Unbuildable Land” means a property that does not conform with the provisions of the Winnipeg Zoning By-law No. 200/2006 or the Downtown Winnipeg Zoning By-law No. 100/2004, or property for which the highest and best use as determined by an accredited appraiser is for consolidation with the adjacent non-City-owned property;

“Ward Councillor” means the elected official that represents the electoral ward within the City of Winnipeg within which the City-owned property or non-City-owned property is located; and

“Winnipeg’s Climate Action Plan" means the City’s strategy to reduce greenhouse gas emissions that was adopted by Council on September 20, 2018 and as amended from time-to-time.

3. Leasing Policy

3.1 Property Management Circulation

A. The Public Service must Circulate City Property to Stakeholders for a minimum of 10 business days, unless otherwise specified by the Director of PPD, prior to recommending that the City Property be leased or licensed.

i. Stakeholders may identify (if necessary):

- A City departmental need, if any;
- Objection to the Lease or Licence.

B. In the event that a Stakeholder objects to a proposed Lease or License, the Stakeholder must indicate their need for the City Property, evidenced through existing infrastructure, recommended project alignment or identified funding within an adopted Capital Budget and Five-Year Forecast.

C. The Public Service shall notify the Ward Councillor subsequent to a completed Circulation if the Public Service intends to recommend that a Lease or Licence be pursued.

3.2 Property Management Lease or Licence

A. A Property Management Lease or Licence must:

- **i.** Obtain best value for the City Property, which may or may not be Market Rent;
- **ii.** Require the Tenant to pay proportionate Operating Costs associated with the Lease or Licence, unless specified otherwise within an Act or City by-law;
- **iii.** Subject to Section 3.2(B), be Marketed;
- **iv.** Align with Council-approved development policies and/or other Council-approved policies;
- **v.** Be open and transparent, ensuring all prospective Purchasers receive equal information and/or access;
- **vi.** Be negotiated in consultation with the City department having jurisdiction over the City Property or programming of the City Property;
- **vii.** Be approved by Council or its delegated authority, and in all cases, the Ward Councillor will be provided notice of the Public Service recommendation prior to submission for approval;
- **viii.** Include insurance and termination provisions as approved by the appropriate City department; and
- **ix.** Adhere to the City's Real Estate Transaction Management Framework.

B. The Public Service is authorized to pursue a Direct Lease or Direct Licence, but is not obligated to do so, where:

- **i.** Unbuildable Land is Leased or Licensed to an adjacent property owner(s) through a Landscape and Maintenance Agreement;
  - The Base Rent of the City Property may be Market Rent, or a lesser amount if the Tenant maintains the City Property (e.g. grass cutting) at their sole cost, which is to the benefit of the City;
- **ii.** The City Property is Leased or Licensed to a government, government agency, or organization established by the City where at least one of following criteria is met:
  - The Lease or Licence aligns with Council direction or a Council mandate;
  - The City Property is required for a capital project; or
  - The Lease or Licence addresses a public need or operational requirement;
- **iii.** The City Property is required for access or parking;
- **iv.** The Licence is an authorized Encroachment;
- **v.** The City Property is Leased or Licensed to a Tenant as part of a condition or settlement from an acquisition of Non-City Property;
- **vi.** The Tenant provides programming or a service in lieu of the City;

vii. The Lease or Licence meets the definition of an Economic Development Transaction; or

viii. The Lease or Licence addresses a specific recommendation or goal within the City's Climate Action Plan.

C. Despite Section 3.2(A)(i), the City may consider, where appropriate, a Property Management Lease or Property Management Licence for less than Market Rent where:

i. The Tenant is a registered Non-Profit Organization (community garden Tenants may be unregistered if applicable);

ii. The Tenant provides activities/programs that are compatible with the City's provision of services/programs, or addresses an identified gap in service to the community as determined by Stakeholders;

iii. The Tenant provides a service for which there is a current and projected need in that location, as determined by Stakeholders, operating for a minimum prescribed number of operating hours;

iv. If the Tenant requires a building, the Lease or Licence must be for a Designated Non-Profit Building;

v. The Tenant agrees to pay proportionate Operating Costs associated with the Lease or Licence (a requirement for improved and unimproved City Property); and

vi. The Tenant agrees to provide their annual financial statements to the City prior to June 1 in each calendar year for the duration of the Lease or Licence.

D. Where a Tenant has requested entry onto City Property in advance of the commencement date as set out in the relevant Lease or Licence, the City may enter into an enter to construct agreement with the Tenant where all six of the following criteria are met:

i. Council or its delegated authority has approved the Lease or Licence;

ii. The terms and conditions of the Lease or Licence have been successfully negotiated as between the City and the Tenant;

iii. The Tenant satisfies insurance requirements certified by the City's Corporate Risk Manager to be adequate to protect the City's interests;

iv. The Tenant agrees to fully release and indemnify the City;

v. Unless the City deems restoration would harm the City Property, the Tenant agrees to restore the City Property, at its sole cost, effort and expense, to its original condition if the Lease or Licence is not finalized, for which evidence of available funding (e.g. letter of credit) shall be required; and

vi. Meet any other term or condition considered necessary by the Director of Legal Services and City Solicitor to adequately protect the interests of the City.

E. The City will recognize the participation of a Broker representing a Tenant in a new Lease transaction of a City Property as follows:

- **i.** The City will pay a Commission of up to 5% of the Base Rent, to a maximum of $100,000, or the percentage set out within the offer to Lease;
- **ii.** The Commission forms part of the offer to lease;
- **iii.** The Commission is payable upon occupancy; and
- **iv.** The City will not recognize Commissions for Lease renewals.

F. Unless directed by another Council policy, gross proceeds of a Lease or Licence are credited to the General Revenue Fund.

G. A summary of all finalized Leases or Licences will be posted on the City's website annually.

3.3 Property Management Short-Term Use Agreements

A. Property Management Short-Term Use Agreements must follow the same provisions as a Property Management Lease or Property Management Licence with the exception of the following:

- **i.** Circulation requirements as set out in Section 3.1 are not required if the duration of the agreement is less than 180 days;
- **ii.** Marketing is not required as set out in Section 3.2(A)(iii);
- **iii.** The location restriction as set out in Section 3.2(C)(iv) is not applicable;
- **iv.** The financial reporting requirement as set out in Section 3.2(C)(vi) is not applicable;
- **v.** A Tenant is not permitted to have consecutive Property Management Short-Term Use Agreements unless approved by the Designated Committee.

3.4 Municipal Accommodations Lease or Licence

A. Leases or Licences must:

- **i.** Obtain best value for the City as determined by Council or its delegated authority;
- **ii.** Protect the City from liability;
- **iii.** Be supported by a City department, utility or Special Operating Agency;
- **iv.** Include proper termination and insurance provisions; and
- **v.** Adhere to the City's Real Estate Transaction Management Framework.

B. Where the City has requested entry onto Non-City Property in advance of the commencement date as set out in the relevant Lease or Licence, the City may enter into a consent to enter to construct agreement with the Landlord where all three of the following criteria are met:

i. Council or its delegated authority have approved the Lease or Licence;
ii. The terms and conditions of the Lease or Licence have been successfully negotiated; and
iii. The City agrees to restore the City Property, at its sole cost, effort and expense, to its original condition if the Lease or Licence is not finalized.

C. Where a City department, utility or Special Operating Agency does not have a site-specific Lease or Licence requirement, the City will issue a Request for Proposal or Expression of Interest in accordance with administrative standards, except for the following situations where a Direct Lease is recommended:
i. Winnipeg Police Services requires confidentiality in order to ensure the safety of their staff;
ii. The space requirement is less than 5,000 square feet and a market analysis is performed with a minimum of three comparative properties.

4. Responsibilities

4.1 Director of PPD is authorized to:

A. Subject to Section 4.5(A), approve all Property Management Leases, Property Management Licences, and settlements claims with a combined Base Rent value, proportionate Operating Costs and Tenant Improvements of $375,000.00 or less, where
i. transactions with a Base Rent value of $10,000.00 or more, the Base Rent is at least 80% of the Market Rent; and
ii. the term of the Lease or Licence is five years or less (with up to one option to renew for an additional term of five years or less), or the term is annual continuing.

B. Approve all Leases or Licences that have pre-approved prices from the Designated Committee;

C. Approve all Tenant Improvements under Property Management Leases or Property Management Licences;

D. Approve any sublease subject to
i. Ward Councillor notification;
ii. the term of the sublease not extending beyond the term of the head lease; and
iii. confirmation of satisfactory insurance provisions.

E. Approve Property Management Short-Term Use Agreements on City Property under jurisdiction of the Director of PPD where, subject to Section 3.2(C), the Base Rent is at least 80% of the Market Rent;

F. Discharge, amend or register caveats on a certificate of title that relate to a Property Management Lease:

- **i.** Amendments to a mortgage are permitted only where the amended principal amount does not exceed the original principal amount.

G. Negotiate and approve the terms and conditions of all agreements with respect to leasing or licensing, including but not limited to the following agreements and documents:

- **i.** Offer to Lease;
- **ii.** License;
- **iii.** Property Management Short-Term Use;
- **iv.** Landscape & Maintenance;
- **v.** Enter to Construct;
- **vi.** Amending;
- **vii.** Assignment;
- **viii.** Confidentiality;
- **ix.** Residential Management;
- **x.** Estoppel Certificate;
- **xi.** Letter of Intent;
- **xii.** Memorandum of Understanding.

4.2 Director of Assets and Project Management is authorized to:

A. Approve all Municipal Accommodations Leases or Municipal Accommodations Licences where

- **i.** the combined Base Rent value, proportionate Operating Costs and Tenant Improvements are $2,000,000.00 or less; and
- **ii.** the term of the Municipal Accommodations Lease or Municipal Accommodations Licence is 10 years or less, with up to one option to renew for an additional term of 5 years or less.

B. Discharge, amend or register caveats on a certificate of title that relate to a Municipal Accommodations Lease.

C. Negotiate and approve the terms and conditions of all agreements with respect to leasing or licensing, including but not limited to the following agreements and documents:

- **i.** Offer to Lease;
- **ii.** License;
- **iii.** Enter to Construct;
- **iv.** Amending;
- **v.** Confidentiality;
- **vi.** Estoppel Certificate;
- **vii.** Letter of Intent;
- **viii.** Memorandum of Understanding.

4.3 CAO is authorized to:

A. Subject to Section 4.5(A), approve all Property Management Leases, Property Management Licences, and settlement claims with a combined Base Rent value, proportionate Operating Costs and Tenant Improvements exceeding $375,000.00 up to and including $750,000.00, where
   i. Base Rent is at least 80% of the Market Rent; and
   ii. the initial term of the Lease or Licence is five years or less, with up to one option to renew for an additional term of five years or less.

4.4 Designated Committee is authorized to:

A. Subject to Section 4.5(A), approve all Property Management Leases, Property Management Licenses, and settlement claims exceeding $750,000.00.

B. Authorize pre-approved Lease prices, where applicable.

C. Approve management agreements for the City's rental portfolio.

4.5 Council is authorized to:

A. Approve all Property Management Leases or Property Management Licences of Parkland or Property used for cemetery purposes in excess of five years, or five years or less without a cancellation clause, noting that:
   i. The Property Management Lease or Property Management Licence requires approval of two-thirds of all members of Council, in accordance with the Charter;

B. Approve all Municipal Accommodations Leases or Municipal Accommodations Licences in excess of 10 years (not including renewals) or $2,000,000.00 in combined Base Rent, proportionate Operating Costs and Tenant Improvements.

Appendix A

List of Non-Profit Building Locations

#	Address	#	Address
1	444 Adsum Dr	41	687 Minto St
2	601 Aikins St	42	365 Murdoch Rd
3	1880 Alexander Ave	43	282 Niverville Ave
4	80 Allard Ave	44	535 Oakdale Dr
5	659 Alverstone St	45	3450 Pembina Hwy
6	218 Antrim Rd	46	346 Perth Ave
7	112 Ashland Ave	47	3180 Portage Ave
8	75 Brazier St	48	4540 Portage Ave
9	2370 Burrows Ave	49	2777 Portage Ave
10	50 Cass St	50	25 Poseidon Bay
11	480 Chalmers Ave	51	75 Poseidon Bay
12	1885 Chancellor Dr	52	295 Pritchard Ave
13	80 Churchill Dr	53	219 Provencher Blvd
14	1100 College Ave	54	233 Provencher Blvd
15	1212 Dakota St	55	900 Raleigh St
16	577 Dalhousie Dr	56	141 Regent Ave W
17	255 de la Cathedrale Ave	57	4246 Ridgewood Ave
18	410 Desalaberry Ave	58	5006 Roblin Blvd
19	251 Donald St	59	505 Ross Ave
20	377 Dufferin Ave	60	759 Ross Ave
21	120 Eugenie St	61	475 Rutland Ave
22	90 Frobisher Rd	62	836 St Joseph St
23	100 Frobisher Rd	63	598 St Mary's Rd
24	466 Gertrude St	64	669 St Matthews Ave
25	1430 Gibbs St	65	811 St Paul Ave
26	266 Graham Ave	66	491 Salter St
27	22 Granite Way	67	100 Sinclair St
28	200 Isabel St	68	370 Southport Blvd
29	510 King St	69	415 Stella Ave
30	725 Kylemore Ave	70	1600 Summit Rd
31	430 Langside St	71	494 Tache St
32	1057 Logan Ave	72	545 Watt St
33	50 Mac St	73	4403 Waverley St
34	910 Maginot St	74	900 Waverley St
35	1637 Main St	75	328 Whittier Ave
36	56 Maple St	76	1960 William Ave W
37	31 McBeth St	77	1466 William Ave W
38	875 McMeans Ave E	78	110 Winona St
39	581 McPhillips St	79	185 Young St
40	140 Meade St	80	360 Cockburn St

Note: Buildings which are primarily used for storage and do not include any significant occupancy are excluded from the above list and not subject to 3.2 (C)(iv).