Agenda – Executive Policy Committee – June 18, 2024

Report – Standing Policy Committee on Property and Development – June 4, 2024

Item No. 3 Proposed License Agreement between Pembina Trails School Division and the City of Winnipeg at 37 Lindenwood Drive West (commonly known as Van Walleghem Park)
(River Heights-Fort Garry Ward)

STANDING COMMITTEE RECOMMENDATION:

On June 4, 2024, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That, subject to the approval of two-thirds of all Council members (pursuant to subsection 205(2)) of The City of Winnipeg Charter), the proposed Terms and Conditions for a License Agreement, attached as Schedule A, in favour of Pembina Trails School Division for the proposed Licensed Area at 37 Lindenwood Drive West, shown as "Licensed Area: 113 ±m2 (1,217 ±ft2)" as indicated on Misc. Plan No. 12507/3, be approved.

2. That the City enter into, execute and deliver a License Agreement with Pembina Trails School Division and such other agreements ("Ancillary Agreements") as determined by the City Solicitor/Director of Legal Services.

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

Agenda – Executive Policy Committee – June 18, 2024

Report – Standing Policy Committee on Property and Development – June 4, 2024

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On June 4, 2024, 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 License Agreement between Pembina Trails School Division and the City of Winnipeg at 37 Lindenwood Drive West (commonly known as Van Walleghem Park)

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

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Pittet	H. Borys	C. Kloepfer	M. Jack

EXECUTIVE SUMMARY

The Public Service has negotiated the Terms and Conditions for a License Agreement in favour of Pembina Trails School Division. The agreement is for a portion of City-owned lands within Van Walleghem Park, located at 37 Lindenwood Drive West and shown as "Licensed Area: 113 ±m^2 (1,217 ±ft^2)" on Misc. Plan No. 12507/3, attached hereto as Schedule A.

Pembina Trails School Division is a non-profit entity which qualifies for a below market license in accordance with the City's "Real Estate – Leasing and Licensing of Property" policy.

The City will be responsible for fertilizing and aeration of the Licensed Area. Pembina Trails will be responsible for all other expenses, including the installation of a play structure and ongoing maintenance of the Licensed Area.

The Ward Councillor has been notified of the intentions of the Public Service.

RECOMMENDATIONS

1. That, subject to the approval of two-thirds of all Council members (pursuant to subsection 205(2)) of The City of Winnipeg Charter), the proposed Terms and Conditions for a License Agreement, attached as Schedule A, in favour of Pembina Trails School Division for the proposed Licensed Area at 37 Lindenwood Drive West, shown as "Licensed Area: 113 ±m^2 (1,217 ±ft^2)" as indicated on Misc. Plan No. 12507/3, be approved.

2. That the City enter into, execute and deliver a License Agreement with Pembina Trails School Division and such other agreements ("Ancillary Agreements") as determined by the City Solicitor/Director of Legal Services.

3. 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

The proposed licensed area is considered parkland. In accordance with subsection 205(2) of The City of Winnipeg Charter, all dispositions of property used or acquired for park or cemetery purposes require approval of at least two-thirds of all members of Council. A lease term in excess of five years is considered to be a disposition of property.

IMPLICATIONS OF THE RECOMMENDATIONS

If the proposed Terms and Conditions are approved by at least two-thirds of all members of Council, the license agreement will commence on the first day of the month following approval.

The term of the proposed License Agreement is annually continuing and can be terminated with 90 days' written notice by either party.

The play structure installed on the Licensed Area will be open for public use.

The City will be responsible for fertilizing and aeration of the Licensed Area. Pembina Trails will be responsible for all other expenses, including the installation of a play structure and ongoing maintenance of the Licensed Area.

HISTORY/DISCUSSION

Pembina Trails School Division approached the City in late 2022 with a proposal to build a new play structure on the City-owned parkland to be enjoyed by everyone in the community.

The proposed License was circulated to applicable City departments for consideration and no objections were received. The Parks and Open Space Division support the new improvement.

The Risk Management Division of Corporate Finance reviewed the insurance requirements for this proposed license and their comments have been incorporated into the Terms and Conditions.

Pembina Trails School Division is a non-profit entity which qualifies for a below market license in accordance with the City's "Real Estate – Leasing and Licensing of Property" policy (Schedule B).

In accordance with the Real Estate Transaction Management Framework, the Public Service completed an appraisal to determine the opportunity cost of the license. The appraisal indicated a market rental value of $5,200 to $5,800 per annum. The highest and best use of the appraisal determined the site should be used for parks and open space based on its current zoning.

The license is considered to represent best value to the City as maintenance will be the responsibility of the licensee and the license supports Sections 3.5 and 3.6 in the Strategic Priorities Action Plan. If the proposed Terms and Conditions are approved by at least two-thirds

of all members of Council, the license agreement will commence on the first day of the month following approval.

The Ward Councillor has been notified of the intentions of the Public Service.

FINANCIAL IMPACT

Financial Impact Statement

Date: April 16, 2024

Project Name:

First Year of Program **2024**

Proposed License Agreement between Pembina Trails School Division and the City of Winnipeg at 37 Lindenwood Drive West (commonly known as Van Walleghem Park)

	2024	2025	2026	2027	2026 to 2032
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	(259)	(267)	(275)	(283)	(1,885)
Net Cost/(Benefit)	$ 259	$ 267	$ 275	$ 283	$ 1,885
Less: Existing Budget Amounts	259	267	275	283	1,885
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Revenues each year from 2024 (assumed to commence on July 1) consist of the $1 rent + $258 admin fee increased by an assumed annual inflation factor of 2%. An internal appraisal indicated annual rental market value of $5,200 to $5,800 for the highest and best use of the Licensed Area, that being for used for parks and open space, as outlined under its current zoning. Assuming a market exists, there is an opportunity cost of up to approximately $55,800 (not adjusted for inflation) associated with the first 10 years of this annual, continuing lease agreement (assuming the lease remains in place for at least this length of time).

Mike McGinn April 16, 2024

Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

- Legal Services (as to legal issues)
- Public Works, Parks and Open Space Division
- Corporate Finance, Risk Management Division (as to insurance matters)

OURWINNIPEG POLICY ALIGNMENT

Goal 4 Good Health and Well-Being

Objective 1 Enable access to basic needs for good physical and mental health.

Policy 4.11 Equitable Service Access. Prioritize equitable access to recreation and parks systems, services, and infrastructure, in order to: enable active living; connect people and nature; create supportive environments; build community capacity; and achieve desired health outcomes, with a focus on children and youth.

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Strategic opportunity #3 - Community Climate Resiliency
Key Directions - Preserve and manage parks and natural areas to support climate change mitigation.

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Goal 6: All City Services are Equitable, Inclusive and Accessible

The City should explore opportunities to collaborate and partner with community organizations and groups to ensure service planning and delivery is as inclusive as possible.

Recreation services and access to nearby greenspace contribute to enhanced individual and community well-being, social inclusion, and positive health outcomes.

SUBMITTED BY

Department: Planning, Property and Development Department
Division: Real Estate and Land Development
Prepared by: Tara Bridgett , Senior Property Manager
Date: April 29, 2024
File No: 9219

Attachments:
Schedule A – Proposed Terms and Conditions
Schedule B – Eligibility Criteria for Below Market Lease/License to Non-Profit Organization

SCHEDULE A

PROPOSED TERMS AND CONDITIONS FOR THE LICENSE OF A PORTION OF

37 LINDENWOOD DRIVE W

Licensor:	1) The City of Winnipeg (hereinafter called the “City”).
Licensee:	2) Pembina Trails School Division (hereinafter called the “Licensee”).
Location:	3) 37 Lindenwood Drive W, Winnipeg, Manitoba (hereinafter called the “CityProperty”).
Licensed Area:	4) Shown, shaded, and identified as "Licensed Area: “113 ±m^2 (1,217 ±ft^2)" on a drawing on file in the City's Planning, Property and Development Department as Misc. Plan No. 12507/3, (hereinafter called the " Licensed Area").
Primary Use:	5) For the sole purpose of the installation and maintenance of a play structure only, and not for any other purpose except with the prior written consent of the City of Winnipeg’s Director of Planning, Property & Development (hereinafter called the “Director”). The Lessee will have non-exclusive use of the Licensed Area and such Licensed Area will be open to the public.
Term:	6) Annually continuing, commencing the first day of the month following approval from City’s Standing Committee and Council, or such other date as mutually agreed upon and approved by the City’s Director of Planning, Property and Development (hereinafter called the “Director”) (hereinafter called the “Term”).
Rent:	7) Year One: One Dollar ($1.00) plus GST per annum, payable on the Commencement Date.
	8) The Rent shall be reviewed annually on the anniversary of the Commencement Date and is subject to change, based on the then current rates approved by Council or pursuant to the powers delegated by Council in accordance with the Fees and Charges By-law No. 196/2008 and amendments thereto.
Non-Profit License:	9) The Licensee represents and warrants that it has provided information to demonstrate eligibility for the criteria set out in the “Policy on Lease/License of City Lands to Non-Profit Organizations”, attached as Schedule "B", and that such information is true and accurate to the best of the Licensee’s knowledge.
Administrative Fee:	10) Annual fee of Two Hundred and Fifty-Eight Dollars ($258) plus GST, payable on the commencement date and on the anniversary of thecommencement date in each year of the Term hereafter.
	11) This fee may be reviewed by the City at any time and may be

subject to change as directed by Council or its delegated authority.

Document Preparation Fee:

12) A one-time Document Preparation Fee in the amount of One Thousand Three Hundred and Thirty Dollars ($1,330.00) plus GST payable within 30 days of the approval of these terms and conditions and only payable in the event that the Licensee does not meet the eligibility criteria in the "Policy on Lease/License of City Landsto Non-Profit Organizations" as per Schedule "B".

Municipal Taxes:

13) The Licensee shall pay to the local taxing authority all/its proportionate share of municipal taxes, realty taxes, school taxes, local improvements taxes, etc. of which may be charged in respect of the use and occupation of the Licensed Area and which shall be billed directly to the Licensee.

14) The Licensee is entitled to make an application to the City pursuant to the provisions of *The Municipal Assessment Act*, C.C.S.M. c. M226 and the City's *Community Groups Occupying City-Owned Facilities By-law No. 89/2005*. If the application is successful, and the resulting amendment to the By-law is approved, the Licensed Area will be exempt from real property taxes and school taxes as of the date of such By-law approval. If the application is notsuccessful or if 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.:

15) The Licensee shall be responsible for all license fees, realty and business tax, levies etc. which may be charged in respect of the use and occupation of the Licensed Area.

16) The Licensee shall be responsible for applying for and obtaining all permits, licenses or permissions (including but not limited to occupancy permits), required for the use and occupation of the Licensed Area, at its sole cost, effort and expense.

17) All fees may be reviewed by the City at any time and may be subject to change as directed by Council or its Delegated Authority.

Insurance Requirements:

18) The Licensee shall provide and maintain the following insurance coverage at all times during the Term of the License Agreement:

a. Commercial general liability policy including, but not limited to, the following provisions:

i. The City to be included as an additional insured;

ii. The policy to contain a cross liability clause or severability of interest clause;

iii. Protection for claims of bodily injury and property damage, contractual liability, employees as additional insured, injury to participants, products and completed operations liability, of at least two million dollars ($2,000,000) per occurrence with a minimum of five million dollars ($5,000,000) general aggregate; and

iv. Shall not contain any special limitations on the scope of coverage afforded the City, its officers, officials, employees, agents or volunteers;

19) The Licensee shall ensure that any Contractor hired to perform construction, repair, maintenance, or renovation work in/to/on/under the Licensed Area, the Licensee shall:

(a) Provide and maintain (or ensure that the contractor provides and maintains) commercial general liability and automobile liabilityinsurance coverage in the amount of at least two million dollars ($2,000,000.00) and worker's compensation to the satisfaction of the City's Supervisor of Insurance based on the works that are taking place (and can include, but is not limited to Builder's Risk insurance and wrap up liability) for all contractors or sub- contractors hired to perform such repair work, maintenance, renovation or construction work. Such insurance to remain in place at all times during the performance of the work until total performance;

(b) File with the City a Certificate of Insurance in a form satisfactory to the City's Supervisor of

Insurance at least five (5) business daysprior to the commencement of any work on the Licensed Area.

20) All deductibles shall be entirely borne by the Licensee.

21) The Licensee shall ensure that all commercial general liabilitypolicies written on behalf of the Licensee contain a waiver of any subrogation right which the Licensee'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.

22) The Licensee shall take all policies out with insurers licensed to andcarrying on business in the Province of Manitoba.

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

24) The Licensee shall provide written notice to the City of any material changes to their policies within thirty (30) days of the change takingeffect.

25) The City shall have the right to alter the limits and/or coverages as reasonably required from time-to-time during the continuance of theLicense Agreement or any subsequent extensions thereof, provided that the City shall give the Licensee reasonable notice and shall request reasonable change.

26) The Licensee shall file prior to construction and occupancy acertificate of insurance with the City in a form satisfactory to the City's Supervisor of Insurance and annually thereafter. All certificates

of insurance are to be sent to:

The City of Winnipeg
Risk Management Division
3rd Floor - 185 King Street, Winnipeg, Manitoba, R3B 1J1
Attention: Supervisor of Insurance
Fax: 204-986-6132
Email: insurance@winnipeg.ca

Termination:

27) The License Agreement may be terminated:

a) Upon ninety (90) days' written notice by either party; or

a. Should the Licensee be in default of any of the terms and conditions of the Agreement, the City shall provide the Licensee with fifteen (15) days written notice to remedy the default along with a description of the nature of the default (or such longer period as may be reasonably required to cure such default considering the nature thereof and as agreed to by the City). Should the Licensee not remedy the default to the satisfaction of the City, the City, at its sole discretion, may terminate this Agreement immediately upon the expiration of the fifteen (15) days' notice period. Upon termination or cancellation of the License Agreement, the Licensee shall remove its property (including both fixtures and chattels)from the Licensed Area and leave same in a condition satisfactory to the Director. Should the Licensee defaultin so doing, the City may:

a) Restore the Licensed Area at the sole risk and expense of the Licensee; and

b) Remove and/or dispose of the Licensee's property (including fixtures and chattels) at the City's sole discretion without the Licensee's consent and at the risk and expense of the Licensee. The City shall not be required to provide any compensation to the Licensee for such removal and/or disposal.

28) Upon termination or cancellation of the License Agreement, the Licensee shall remove, at its sole cost, effort and expense, all of its property (including both fixtures and chattels) from the Licensed Area and leave same in a condition satisfactory to the Director. Should the Licensee default in so doing, the City may:

a) Restore the Licensed Area at the sole risk and expense of the Licensee; and

b) Remove and/or dispose of the Licensee's property (including both fixtures and chattels) at the City's sole discretion without the consent of the Licensee and at the risk and expense of the Licensee. The City shall not be required to provide any

compensation to the Licensee for such removal and/or disposal.

29) Notwithstanding the forfeiture or termination of the License Agreement in any manner herein provided for, the Licensee shall be and remain liable 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 Licensee to be observed and performed upon after the said termination.

Development:

30) Unless otherwise specified herein, all improvements, development, construction and maintenance of the Licensed Area will 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 Licensed Area for its intended use. All improvements, development and construction are subject to the prior written approval of the Director.

31) The Licensee shall bear the cost for caveats and plans of easement for any structure or improvements requiring utility servicing.

32) The Licensee shall follow the accessible design standards in its improvement's constructions and installations.

33) The Licensee shall not suffer or permit any claim, lien, or charge under the Builders' Liens Act, C.C.S.M. c. B91, or any like statute to be made, filed, or registered against the City or against the Licensed Area or any fixtures or improvements thereto by reason of Work, labor, services or materials supplied or claimed to have been supplied to the Licensee.

34) The Licensee will not erect or permit the erection of any building or structure whatsoever on the Licensed Area, nor do any excavation therein or improvement thereon, without the prior written consent and authority of the City's Director of Planning, Property, and Development.

35) The Licensee is advised that no permanent structures are permitted above public utilities.

36) Unless otherwise specified herein, title to all buildings and structures currently existing, as well as those hereafter erected, shall vest in the City upon termination, cancellation or expiration of the License Agreement, subject to the option of the City to demand

removal of the buildings or structures from the Licensed Area at the termination, cancellation or expiration of the License Agreement.

37) The Licensee shall, in case of every installation and removal of improvements, either during or at the end of the Term, make good any damage caused to the Licensed Area by the installation and removal, provided, however, that in the event that the Licensee fails

to make good any such damage as aforesaid, the City may so repair the Licensed Area and the Licensee shall, immediately upon demand of the City, reimburse the City for all expenses incurred with respect to such repair. Such a claim by the City shall survive the termination of the License Agreement.

Repairs and Maintenance:

38) The Licensee shall, at its sole cost, effort and expense:

a) Maintain and repair the Licensed Area in a safe, clean and tidy condition to the satisfaction of the Director.;

b) Ensure that access to, use of, and occupancy of the Licensed Area is conducted in a careful manner, in accordance with good industry standards and in compliance with the provisions of any and all applicable environmental, health or safety statutes, regulations, orders or directives of any government or governmental agency having jurisdiction over such matters;

c) Assume responsibility for any and all damage done to the Licensed Area by reason of, or arising out of, forcible entry into any structures located on the Licensed Area by any person for an unlawful purpose such as, but not limited to, theft, attempted theft, burglary, or attempted burglary; and

d) Comply with any written notice from the City to repair the Licensed Area at the Licensee's sole cost, expense and effort within thirty (30) days of receiving such notice.

39) The Licensee shall reimburse the City for any and all costs incurred by the City in making good any loss or damage to the Licensed Area, City's property and/or utilities caused as a result of the Licensee's use and occupancy of the Licensed Area or, without limiting the generality of the foregoing, caused as a result of any negligent or willful act of the Licensee, its contractors, agents, servants or employees.

40) All maintenance and repair costs associated with the use and operation of the Licensed Area during the Term shall be the sole responsibility of the Licensee;

Signage:

41) The Licensee shall not paint, display, inscribe, place or affix any sign, symbol, notice, advertisement or lettering of any kind, including affixing items in the form of resources to the walls, without the prior written approval of the City as to design, size and location, which approval the City may in its absolute, sole and uncontrolled discretion withhold.

42) In the event that the Licensee wishes to pursue sponsorship opportunities, including naming rights, for the Licensed Area, any improvements or proposed improvements thereon or in any other

way related to the Licensed Area, the Licensee is required to comply with the City's Sponsorship Policy.

Assignment or Sub-let:

43) The Licensee is not to assign or sub-license all or any part of the Licensed Area without the Licensee first obtaining the Director's prior written consent. In such event, the City in its sole discretion may cancel the license and enter into a new agreement;

44) Upon its making application for such consent by the City, the Licensee shall pay to the City a non-refundable administrative fee of Six Hundred and Forty ($640.00), plus G.S.T, or such amount as may from time to time be determined by the City in its sole discretion.

45) Any consent by the City to an assignment shall not relieve the Licensee of its obligation for the payment of rents hereby reserved and the performance of the terms and conditions herein contained.

Conditions:

46) The Licensee takes the Licensed Area on an "as is" basis.

47) The Licensee shall not release into the environment, or deposit, discharge, place, or dispose of, at, on, or near the Licensed Area and/or adjoining City land, any dangerous goods as that term is defined in *The Dangerous Goods Handling and Transportation Act*, CCSM c. D12, as amended, replaced, or substituted from time to time.

48) The Licensee shall not affect the Licensed Area in any undesirable environmental manner. If the Licensee causes the Licensed Area to become contaminated, as determined by the City, the City may require the Licensee to immediately restore the land to its original condition at the Licensee's sole cost and expense. The City shall not be responsible for contamination caused by the Licensee and the Licensee shall indemnify the City from and against same.

49) The City shall have the right, but not the duty, to enter upon the Licensed Area from time-to-time to inspect the Licensed Area for environmental contamination and in the course thereof to conduct soil and ground water testing. The City may enter the Licensed Area during regular business hours of the Licensee without prior notice, and may enter the Licensed Area during periods other thanregular business hours either with prior written consent of the Licensee or without if the City reasonably believes that an emergency exists on the Licensed Area. The City shall conduct any such inspections or

testing so as to minimize interference withthe Licensee's business operations. The City's entry on to the

Licensed Area shall not relieve the Licensee's obligation to pay rent under the License.

50) The Licensee shall not at any time use, exercise or carry on or permit or suffer to be used, exercised or carried on, in or upon the Licensed Area or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling and the Licensee shall not do, omit or suffer or permit to be done or omitted in, on or upon the Licensed Area or any part thereof, anything whatsoever which shall or may be or grow to the annoyance, nuisance, damage or disturbance of the City or the owners or occupiers of neighbouring properties.

51) The Licensee agrees that its operation shall not negatively impact the adjoining areas, and any such impact shall constitute a breach of the Agreement.

52) The Licensee agrees that any misuse of the Licensed Area may result in termination of the License agreement.

53) The Licensee agrees that if at any time during the Term of this Agreement the City's use or requirements for the Licensed Area reasonably necessitate the relocation and/or modification and/or removal of the Licensee's property from the Licensed Area, the Licensee shall be responsible for doing all things necessary to relocate and/or modify and/or remove its property as required by the City and to pay all costs and expenses associated therewith.

54) The Licensee shall not file any caveat or other encumbranceagainst the Licensed Area. For greater certainty, the Licensee shallnot enter into any easement agreements with public utilities with respect to the Licensed Area.

55) The Licensee is to comply with all laws, by-laws and regulations of any federal, provincial or municipal or other applicable authority, pertaining to the use, development and occupancy of the Licensed Area, and shall obtain all necessary permits and variance orders in that regard at its sole cost and expense.

56) 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 Licensed Area for any use or purpose, nor as to any environmental conditions which may exist.

57) The Licensee acknowledges and agrees that it will not be entitled to an abatement or reduction in Rent as a result of any nuisance, disruption to or interference with the Licensee's use and enjoyment of the Licensed Area where such nuisance, disruption

to or interference is caused by the construction by the City or others of improvements, alterations, additions or repairs to the Licensed Lands. The Licensee further agrees not to make any claim against the City for such nuisance, disruption to or interference with the use of the Licensed Area.

58) The Licensee shall release and indemnify and save the City harmless from and against any and all claims for damages or injuries, including death, which may arise from the use of the Licensed Area by the Licensee. This provision shall survive any termination or expiration of this Agreement.

59) Notwithstanding anything to the contrary contained in the License Agreement, if either party hereto is bona fide delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of a force majeure event including, but not limited to: strikes; walkouts; labor troubles; industrial disturbances; inability to procure materials or services; failures, fluctuations governmental laws, regulations or controls; riots; civil commotions; insurrections; sabotage; terrorism; invasion; rebellion; military or usurped power; war or warlike operations; blockades; epidemics; pandemics; washouts; nuclear and radiation activity or fallout; explosions; natural disasters; acts of God; or other reason whether of a similar nature or not which is not the fault of the party delayed in performing Work or doing acts required under the terms of the License Agreement, then performance of such term, covenantor act shall be excused for the period of the delay and the party sodelayed shall be entitled to perform such term, covenant or act within the appropriate time period after the expiration of the periodof such delay. This provision shall not operate to excuse Licenseefrom the payment of Rent/Fees in the amounts and at the times specified in the License Agreement nor shall they apply so as to extend the period of time for the Licensee to complete Licensee's work or to extend the fixturing period, if any, nor shall they entitle the Licensee to compensation for any inconvenience, nuisance or discomfort thereby occasioned.

60) The Licensee shall not disturb, remove, prune or damage a tree or shrub within the Licensed Area and/or adjacent natural area. If the Licensee has concerns over pruning or removal of a tree, shrub or habitat, the Licensee shall obtain written approval by the City Forester or designate prior to any work being conducted. The Licensee shall submit an Agreement for Contractors to Perform Arboricultural Services on Trees Under the Control of The Urban

Forestry Branch:

(http://winnipeg.ca/publicworks/parksOpenSpace/UrbanForestry/P

DF/Agreement_for_Contractors_August_2016.pdf) and shall hire a qualified contractor to perform the work, if the work is approved.

61)The Licensee shall not use any pesticide treatments in or around the Licensed Area.

City's Rights and Responsibilities

62) The City shall have the right of access to the Licensed 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 Licensed Lands, and for doing any work to maintain, operate, repair, inspect or rehabilitate its existing water mains, sewer lines, and appurtenances, in or near tothe Licensed Area, without being responsible for any damageoccasioned thereby.

63) The City reserves the right for BellMTS Inc. and The Manitoba Hydro-Electric Board and Water and Waste Department or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Licensed Area 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 facilitiesas a result of the proposed License will be at the expense of the Licensee.

64) The Licensee shall notify the Utility Companies, Manitoba Hydro, Bell MTS, and Water and Waste Department of any proposed improvements and constructions on the Licensed Area to verify any existing plant or facilities for the utility companies located within the Licensed Area.

65) The City reserves the right for Bell MTS Inc. and Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Licensed Area for maintenance and/or repair of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby.

66) The City shall maintain responsibility for the following:

a. Fertilizing of the Licensed Area; and

b. Aeration Licensed Area.

Other:

67) The Licensee shall 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 within six (6) months from the date following approval from the City's Standing Committees and Council, or its delegated authority, or such other date as mutually agreed upon and approved by the City's Director of Planning, Property & Development.

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

Pembina Trails School Division, hereby agree(s) to enter into a License Agreement with the City of Winnipeg for the use of the property identified as "**Licensed Area"** on the attached Misc. Plan No.**12507/3** and in accordance with the terms and conditions as outlined herein.

Signed in the City of Winnipeg, in the Province of Manitoba, this 29th day of February, 2024.

Original documents signed by the Licensee

Per: _____

Name: Scott Carleton, Secretary Treasurer

MISCELLANEOUS PLAN



SCHEDULE B

Eligibility Criteria for "Policy on Lease/License of City Lands to Non-Profit Organizations"

	Criteria	Meets Criteria	Does NOT Meet Criteria	Notes
1	The Organization is a registered Non-Profit Organization.	√		Pembina Trail School Division is a registered not-for-profit corporation.
2	The Organization provides activities/ programs that are compatible with the City's provision of services/programs, oraddresses an identified gap in service to the community as determined by Stakeholders.	√		The School Division provides programs on school grounds as scheduled during regular school hours and when required until 6:00p.m. This provides opportunity for school to engage the children in recreational activity during school session and after.
3	The Organization provides a service forwhich there is a current and projected need in that location, as determined by Stakeholders, operating for a minimum prescribed number of operating hours.	√		All school playgrounds including the ones owned by City are utilized for Physical Education programs and other school programs and events during the day and as scheduled by the C.O.W. and Community Clubs in the evenings. (after 6:00 p.m.)
4	Demonstrate how the organizationprovides reasonable access to all Winnipeg residents without discrimination	√		Pembina Trails, we are committed to educational excellence through challenging and enriching experiences for all, in a safe and caring community. We provide challenging learning opportunities that support individual growth, encourage our students to care for each other and the world in which we live, recognize and celebrate each of our unique and diverse gifts, and promote a sense of community and belonging, both in the division and in the world
5	The Organization agrees to pay proportionate Operating costs associated with the Lease or License (a requirement for improved and unimproved City property).	√		Pembina Trails School Division agrees to perform ongoing maintenance and repairs as required.This amenity will be part of our weekly playground inspection routine which will ensure proper upkeep.
6	The Organization agrees to provide their annual financial statements to theCity prior to June 1 in each calendar year for the duration of the Lease or License.	√		This amenity will not generate income and as such there will be no financial statements issued to the C.O.W
General Remarks: Pembina Trails School division is seeking an opportunity to increase the recreational activities of their student. This use of the land for building a play structure which will help achieve the schools aim and also contribute to improving the recreational activity for the Community.				