



## STAFF REPORT ACTION REQUIRED

### Sub-Lease Agreement between City of Toronto and North York Hearts Soccer Club Inc. for the Exclusive Use of a Storage Shed at Esther Shiner Stadium

<b>Date:</b>	April 10, 2008
<b>To:</b>	Government Management Committee
<b>From:</b>	General Manager, Parks, Forestry and Recreation
<b>Wards:</b>	Ward 10 – York Centre
<b>Reference Number:</b>	

#### SUMMARY

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The purpose of this report is to request Council authority to negotiate and enter into a twenty (20) year Sub-Lease Agreement for the installation and exclusive use by the North York Hearts Soccer Club Inc. (the Club) of a 25 x 40 square foot pre-engineered metal storage shed at the north-west corner of Esther Shiner Stadium.

#### RECOMMENDATIONS

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**The General Manager of Parks, Forestry and Recreation Division recommends** that authority be granted to negotiate and enter into a Sub-Lease Agreement for a term of twenty (20) years with the North York Hearts Soccer Club Inc. at a nominal Sub-Lease Fee of One Dollar (\$1.00) per annum for the duration of the term, for the construction and installation of a 25 x 40 square foot pre-engineered metal storage shed secured on a concrete foundation located on the north-west side of Esther Shiner Stadium (the Stadium), municipally known as 5720 Bathurst Street and owned by the Toronto District School Board, and which will be reserved for exclusive use by the North York Hearts Soccer Club Inc. for the sole purpose of storing soccer equipment, uniforms, and other soccer materials, and in accordance with terms and conditions set out in Appendix “A” to this report and such other terms and conditions as are acceptable to the General Manager of Parks, Forestry and Recreation, and all in a form and content satisfactory to the City Solicitor.

## **FINANCIAL IMPACT**

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There will be no financial implications resulting from the adoption of this report.

## **ISSUE BACKGROUND**

The North York Hearts Soccer Club Inc. is proposing to enter into a Sub-Lease Agreement with the City for the exclusive use of a pre-engineered metal storage shed measuring approximately 25 x 40 square feet at the north-west corner of Esther Shiner Stadium for the sole purpose of storing soccer equipment, uniforms, and other soccer materials. The Sub-Leased Premises will only be accessible during Parks, Forestry and Recreation designated operating hours as determined by the General Manager of Parks, Forestry and Recreation. The Sub-Leased Premises shall only include the entire metal storage shed secured on a concrete foundation and shall not include any lands beyond the boundary of the Sub-Leased Premises.

The Club will be paying a nominal Sub-Lease Fee of One Dollar (\$1.00) per annum for the duration of the term of the Sub-Lease and shall be required to construct a concrete foundation and install the pre-engineered metal storage shed at no cost to the City for the exclusive use of the Sub-Leased Premises. The Club shall be solely responsible for any and all taxes including, but not limited to, Goods and Services Tax, business and/or property taxes resulting from the use of the Sub-Leased Premises. The Club shall also be solely responsible for all costs of installation and payment of all required utilities, including, but not limited to, water, hydro, gas and any other services to the Sub-Leased Premises throughout the Sub-Leased Term.

## **COMMENTS**

The Stadium is built on lands owned by the Toronto District School Board, (TDSB), which lands are leased to the City at a nominal fee of Two Dollars (\$2.00). The TDSB has consented to both the installation and sub-leasing of the storage shed. The Sub-Lease Agreement will be for a twenty (20) year term commencing on May 1, 2008 and ending April 30, 2028, provided that, if the lease from TDSB to the City is terminated, the Sub-Lease shall also terminate.

The North York Hearts Soccer Club shall be solely responsible for any and all costs associated with the construction, installation and ongoing maintenance and operating costs of the storage shed on the Sub-Leased Premises. The Club shall ensure that all City policies and procedures respecting the construction, installation and use of the storage shed are adhered to and that all necessary written City approvals are obtained prior to the construction and installation of the storage shed. The Club shall also ensure that the construction and installation of the storage shed and any equipment is in accordance with all safety and building code requirements.

The City will not be responsible or liable, in any form whatsoever, for damage or theft to the Club's or the Club's agents' equipment and/or personal property from, but not limited to, use, storage or vandalism.

All drawings and plans for the proposed improvements will be approved by the City and will be inspected upon completion to ensure compliance to City standards as a condition of the Sub-Lease Agreement.

Upon expiry or other termination of the Sub-Lease Agreement, the storage shed and any and all structural improvements to the Sub-Leased Premises shall remain the property of the City unless the General Manager of Parks, Forestry and Recreation requests its removal which, if so requested, shall be removed by the Club at its own risk and expense. Any and all structural or other improvements to the Sub-Leased Premises, with all damage, if any, caused by such removal shall be made good by the Club, and the Sub-Leased Premises shall be left in good repair, reasonable wear and tear only excepted, and free of all waste material/debris/rubbish, all to the reasonable satisfaction of the General Manager.

The General Manager of Parks, Forestry and Recreation Division recommends that the City enter into a Sub-Lease Agreement with the North York Hearts Soccer Club Inc. in accordance with the terms and conditions set out in this report and such other terms and conditions as are acceptable to the General Manager of Parks, Forestry and Recreation, and all in a form and content satisfactory to the City Solicitor.

## **CONTACT**

Neil Zaph, Director, Strategic Services, Tel: 416-395-6065, Fax: 416-392-8565, Email: [nzaph@toronto.ca](mailto:nzaph@toronto.ca)

Doug McDonald, Manager, Business Services, Strategic Services, Tel: 416-392-8578, Fax: 416-392-3355, Email: [dmcadona0@toronto.ca](mailto:dmcadona0@toronto.ca)

## **SIGNATURE**

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Brenda Librecz, General Manager  
Parks, Forestry and Recreation Division

## **ATTACHMENTS**

Appendix A – Terms and Conditions

## **Appendix “A”**

### **Terms and Conditions**

#### **1. Sub-Leased Premises:**

A pre-engineered metal storage shed, on a concrete foundation both to be constructed by the Sub-Lessee, located on the north-west side of Esther Shiner Stadium (the Stadium), municipally known as 5720 Bathurst Street, which will be reserved for exclusive use by the North York Hearts Soccer Club Inc. for the purpose of storing soccer equipment, uniforms, and other soccer materials, and subject to the review and approval of City of Toronto officials, Committee and Council as required. The Stadium is built on lands owned by the Toronto District School Board, (TDSB), which lands are leased to the City.

The Sub-Leased Premises shall include the entire metal storage shed measuring 25’ x 40’ square feet secured on a concrete foundation but shall not include any lands beyond the boundary of the Sub-Leased Premises.

#### **2. Sub-Lessee:**

North York Hearts Soccer Club Inc.

#### **3. Use:**

The Sub-Leased Premises shall be for the exclusive use by the North York Hearts Soccer Club Inc. as a storage facility only for the purpose of storing soccer equipment, uniforms, and other soccer materials, and for no other purpose whatsoever.

The Sub-Lessee shall have no exclusive rights or claim to use the park or any other part of the facilities without the approved City permits.

The Sub-Lessee shall not be in possession of any keys to the Stadium other than those required for the Sub-Leased Premises and shall have access to the Sub-Leased Premises only during Parks, Forestry and Recreation designated operating hours as determined by the General Manager of Parks, Forestry and Recreation.

#### **4. Sub-Lease Term:**

The Sub-Lease Term shall be for a period of twenty (20) years commencing on May 1, 2008. Provided, if the lease from TDSB to the City is terminated the Sub-Lease shall also terminate.

**5. Sub-Lease Fee:**

The Sub-Lease Fee shall be a nominal amount of One Dollar (\$1.00) per annum (the “Basic Rent”) for the duration of the term of the Lease.

Should the metal storage shed, including, but not limited to, the concrete foundation, its contents or any signs, be damaged by vandalism or an act of nature, the Sub-Lessee shall be solely responsible for all costs associated with the repair and/or replacement. If the Sub-Lessee fails to perform the required repairs, the City may complete the said repairs and invoice the Sub-Lessee for all costs involved.

The Sub-Lessee shall be responsible to pay all taxes, including any Goods and Services Tax if applicable, rates, duties, levies, assessments and impositions whatsoever, whether municipal, parliamentary or otherwise levied, charged or assessed upon the Sub-Leased Premises, and where the Sub-Leased Premises is assessed for separate school support by reason of the use or occupation of the Sub-Leased Premises by the Sub-Lessee or any person claiming under the Sub-Lessee, to pay to the City, or as it may direct, the excess taxes resulting from such support for the remainder of the calendar year in which such termination occurs except to the extent that such excess taxes are recovered from a subsequent Sub-Lessee.

The Sub-Lessee shall also be responsible to pay all business and/or property taxes in respect of the business carried on by the Sub-Lessee, or levied by reason of the Sub-Lessee’s occupation of, the Sub-Leased Premises.

**6. Utilities and Maintenance:**

The Sub-Lessee shall be solely responsible for any and all costs associated with the construction, installation and ongoing maintenance and operating costs of the storage shed on the Sub-Leased Premises. The Sub-Lessee, at its sole expense, shall obtain all necessary planning approvals and agreements with any authorities and utilities relating to the storage shed so as to be in a position to obtain a full building permit. The Sub-Lessee shall perform all obligations under any such agreement as applicable to the installation of the storage shed at its sole expense. The Sub-Lessee shall also be solely responsible for the cost of any upgrade, repair and/or replacement of the shed, in part or in whole, or equipment as required and if damaged through normal wear or vandalism.

The Sub-Lessee shall be solely responsible for the cost of installation and the payment of all required utilities, to be metered separately, including, but not limited to, water, hydro, gas and any other services to the Sub-Leased Premises throughout the Leased Term.

The Sub-Lessee shall keep the Sub-Leased Premises in a good state of repair. The Sub-Lessee shall maintain the Sub-Leased Premises at a high level of cleanliness and neatness of appearance and the General Manager to be the sole judge, acting reasonably, as to the sufficiency of same, or of any equipment used in relation to the Sub-Leased Premises, with the power to order any changes or alterations thereto that she may from time to time deem desirable.

**7. Termination or Expiry:**

It is mutually agreed that if the Sub-Lessee shall default in any of the terms, conditions, or covenants or provisions of the Sub-Lease, the City may forward notice in writing of such default to the Sub-Lessee, and failure of the Sub-Lessee to cure such default to the satisfaction of the City of Toronto within fifteen (15) days after the date of the receipt of the notice shall, at the option of the City work as a forfeiture of the Sub-Lessee and shall give the City the right, at its option to treat this Sub-Lease as cancelled and terminated, and the term and estate vested in the City of Toronto, as well as all other rights of the Sub-Lessee hereunder, shall immediately cease and expire as fully and with like effect as if the entire terms herein provided for had expired, and the City may enter the demised premises, with or without process of law, and take possession together with and all improvements which may have been erected thereon, the Sub-Lessee waiving any demand for possession thereof, and all improvements made upon the premises shall be forfeited and become the property of the City as liquidated damages without compensation thereof to the Sub-Lessee.

Upon expiry or other termination of this Sub-Lease Agreement, the storage shed and any and all structural improvements to the Sub-Leased Premises shall remain the property of the City, or, if so requested by the General Manager, the Sub-Lessee, at its own risk and expense, shall remove from the Sub-Leased Premises within ninety (90) days, all chattels belonging to the Sub-Lessee and any or all structural or other improvements to the Sub-Leased Premises, with all damage, if any, caused by such removal made good by the Sub-Lessee, and to leave the Sub-Leased Premises in good repair, reasonable wear and tear only excepted, and free of all waste material/debris/rubbish, all to the reasonable satisfaction of the General Manager.

**8. Construction and Installation:**

The Sub-Lessee shall not make improvements and/or construct a concrete foundation or install the pre-engineered storage shed, without the prior City approval of all drawings and plans and without the appropriate written City approvals.

The Sub-Lessee shall be solely responsible for any and all costs and liabilities associated with the transportation of the construction materials to the site. The Sub-Lessee shall be responsible to ensure all materials and any equipment used

for construction is moved to their designated locations through the Sub-Leased Premises in such a manner that there is no damage to the existing land and/or structures. The Sub-Lessee shall provide a detailed site and transport plan that includes the height of any materials or equipment used during transportation and installation.

The Sub-Lessee shall be responsible to provide protection to any and all trees and buildings that may be potentially damaged during installation and renovation or during any aspect of on site work. The location and type of protection provided must be approved by City officials. There shall be no work performed or storage of any materials in the tree protection zones.

The Sub-Lessee shall ensure that the construction site is secure and meets all safety and building code requirements. All materials and equipment must be stored within the hoarding area. The City shall not be liable for any materials or equipment stored on site. The location and type of hoarding barrier provided must be approved by City officials. The City shall have the right to inspect the construction site at any time without prior notice.

The Sub-Lessee shall ensure that the construction site is kept in a clean and orderly state at all times. The Sub-Lessee shall be responsible for the timely and safe removal of all garbage and excess construction materials. There is to be no garbage stored on the Sub-Leased Premises.

The storage of fuel of any nature will not be permitted on the Sub-Leased Premises at any time whatsoever.

The City will not be responsible or liable, in any form whatsoever, for damage or theft to the Sub-Lessee's or the Sub-Lessee's agents' equipment and/or personal property from, but not limited to, use, storage or vandalism.

The Sub-Lessee shall not store any construction materials or equipment on the access road or walkways into the facility and/or park.

There shall be no vehicular parking allowed adjacent to the Sub-Leased Premises or the surrounding lands. Vehicular parking shall be permitted only in the City's designated community parking lot for the facility.

## **9. Indemnity:**

(1) The Sub-Lessee shall at all times indemnify and save harmless the City and TDSB of and from any and all manner of claims, demands, losses, costs, charges, actions and other proceedings whatsoever (including those under or in connection with the *Workplace Safety and Insurance Act, 1997* or any successor legislation), made or brought against, suffered by or imposed on the City or TDSB or their respective property in respect of any loss, damage or injury (including

fatal injury) to any person or property (including, without restriction, employees, agents and property of the City, TDSB or of the Sub-Lessee) directly or indirectly arising out of, resulting from or sustained as a result of the Sub-Lessee's occupation or use of, or any operation in connection with, the Sub-Leased Premises or any fixtures or chattels thereon (including water left running, gas that escapes or imperfect or insufficient installation of any construction or other improvement thereon).

(2) The Sub-Lessee shall fully indemnify and save harmless the City and TDSB against and from all liens and other claims under the ***Construction Lien Act*** or any successor legislation related to any work performed by or at the direct or indirect request of the Sub-Lessee at the Sub-Leased Premises, and shall at its own expense see to the removal from the registered title to the Sub-Leased Premises and/or surrounding lands, by discharge or Order, of any claim for such lien or Certificate of Action in connection therewith, promptly and in any event within Ten (10) Days of being notified in writing by the City to do so, failing which the City may see to such removal and recover the expense and all attendant costs from the Sub-Lessee as licence fees owing and in arrears.

#### **10. Insurance:**

The Sub-Lessee shall, at all times during the term and any extension or renewal thereof, at its own expense and in the names of the Sub-Lessee and the City maintain in full force insurance coverage for legal liability for bodily injury, death or property damage in the amount of Five Million Dollars (\$5,000,000.000) per occurrence. All insurance maintained by the Sub-Lessee pursuant to the Sub-Lease shall add TDSB as an Additional Insured. Every policy shall provide cross-liability coverage protecting the City and TDSB in respect of claims by the Sub-Lessee. An original Certificate of Insurance is required upon execution of the Sub-Lease Agreement. The Insurance provision must be in a form and content acceptable to the City of Toronto Treasurer at all times and may be amended from time to time.

#### **11. Hazardous Substances:**

The Sub-Lessee covenants that during its occupation of the leased area no hazardous substances, as defined by the Environmental Protection Act or any other applicable Act, as amended from time to time, shall be placed or left on the site area at any time for any reason whatsoever.

#### **12. Signage:**

The Sub-Lessee shall not erect or post any signs without the written approval of the General Manager of Parks, Forestry and Recreation. All signs must be of a size, design and construction that is satisfactory to the General Manager and must meet all laws and by-laws relating to signs.



**13. Removal of Trees:**

Any removal or pruning of trees by the Sub-Lessee is strictly forbidden. The City shall determine which, if any, trees are to be removed. The Sub-Lessee shall be solely responsible for the cost of any tree removal and/or replacement. Destruction or removal of any tree by the Sub-Lessee shall be a breach of the Sub-Lease Agreement and the Licensor may terminate the agreement by 24 hours notice.

**14. Assignment:**

The Sub-Lessee shall not assign or sublet without the prior written consent of the General Manager of Parks, Forestry and Recreation, and TDSB which consent may be arbitrarily or unreasonably withheld.

- 15.** The Sub-Lessee shall comply with all federal, provincial and municipal laws, including without limitation, all environmental legislation, and shall comply by-laws, regulations and rules affecting the Sub-Leased Premises and their use, including the obtaining of all necessary consents, permits, Leases and inspections at its own expense and to indemnify the City against all costs and other liability resulting from its failure to comply. The Sub-Lessee also covenants and agrees that it shall not carry out any work on the Sub-Leased Premises without first receiving all necessary consents, permits, Leases and inspections from all governmental and regulatory authorities having jurisdiction.

- 16.** The Sub-Lessee agrees that it does not retain any density rights that could be applicable to the Sub-Leased Premises and any density acreage may be transferred to another site with no right of compensation.

**17. Documentation:**

- (a) The Lease Agreement shall be subject to such other terms and conditions as may be deemed reasonable and necessary by the City Solicitor;
- (b) All documentation shall be in the Lessor's standard form and, notwithstanding any clause contained or not contained in this proposal, the License Agreement must be in a form and content acceptable to the City of Toronto Solicitor.