



## STAFF REPORT ACTION REQUIRED

### Amendment to Ground Lease between City and Toronto District School Board – 300 Birmingham St.

<b>Date:</b>	July 28, 2010
<b>To:</b>	Government Management Committee
<b>From:</b>	Chief Corporate Officer General Manager, Parks, Forestry and Recreation
<b>Wards:</b>	Ward 6 – Etobicoke – Lakeshore
<b>Reference Number:</b>	P:\2010\Internal Services\RE\Gm10062re – (AFS 12606)

#### SUMMARY

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The purpose of this report is to obtain City Council authority to amend a ground lease between the City of Toronto and the Toronto District School Board pertaining to land located west of Kipling Ave. and north of Birmingham St., as illustrated in Appendix “A”. The amendment to the ground lease will enable the Toronto District School Board to enter into a sublease agreement with a private operator to manage, re-configure the site, and install artificial turf and a removable air supported structure that will be located in part on land covered by the ground lease and the remainder on land owned by the School Board. The field will be used for community sport purposes. The private operator and the School Board will be responsible for all costs of construction and installation and will be entitled to retain the revenues derived from the operation of the fields.

This proposal will provide greatly needed year round recreational space for Lakeshore Collegiate, and the community.

#### RECOMMENDATIONS

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**The Chief Corporate Officer and the General Manager of Parks, Forestry and Recreation recommend that:**

1. City Council authorize amendments to a Ground Lease Agreement dated October 29, 2007 (the “Birmingham Lease”) between the City and Toronto District School Board (“TDSB”) to enable TDSB to enter into a sublease agreement with Nustadia Recreational Inc. (“NRI”), or a related corporation of

- NRI to manage and install a football field, an artificial turf (the "Soccer Field") and a removable air supported structure (the "Dome") on land located west of Kipling Ave. and north of Birmingham St., as illustrated in Appendix "A" (the "City Land"), such amendments to be on terms and conditions deemed appropriate by the Chief Corporate Officer, in a form acceptable to the City Solicitor, and conditional upon the General Manager of Toronto Water first approving the location and installation of the Soccer Field and Dome on the City Land and appropriate terms and conditions to ensure timely access by the City to the storm sewers within the site where required for emergency and repair/replacement purposes without liability or cost to the City;
2. City Council authorize the Chief Corporate Officer to provide consent on behalf of the City as Landlord under the Birmingham Lease to any submission of applications required to be submitted by TDSB or NRI for land use approvals, or such consents as may be required in relation to any existing easement agreements affecting the City Land;
  3. City Council authorize amendments to the Recreational Facilities Agreement between the City of Toronto and TDSB governing the City Land and the adjoining Lakeshore Collegiate, if necessary to accommodate the proposed use, on terms deemed appropriate by the General Manager of Parks, Forestry and Recreation and in a form acceptable to the City Solicitor;
  4. The Chief Corporate Officer and the Director of Real Estate Services be severally authorized to execute the Birmingham Lease amending agreement on behalf of the City, and the General Manager of Parks, Forestry and Recreation be authorized to execute the Recreational Facilities amending agreement on behalf of the City;
  5. The Chief Corporate Officer be authorized to administer and manage the amended Birmingham Lease including the provision of any consents, approvals, notices and notices of termination, provided that the Chief Corporate Officer may, at any time, refer consideration of such matters (including their content) to City Council for its determination and direction; and
  6. The City Solicitor be authorized to complete the transaction on behalf of the City, including paying any necessary expenses, amending dates, and amending and waiving terms and conditions, on such terms as she considers reasonable.

### **Financial Impact**

NRI and TDSB will be responsible for all costs of construction and installation of a football field, an artificial turf ("Soccer Field") and a removable air supported structure ("Dome") and will be entitled, subject to the City's rights during July and August, to retain all revenues derived from the operation of the fields.

TDSB will not be charged for its use of the fields, however, TDSB will be responsible for the maintenance of the football field which will eliminate maintenance costs that Parks, Forestry and Recreation Division is currently incurring.

Any changes in the revenues and expenditures that arise from this agreement will be accounted for and reported through the 2011 Operating Budget submission for Parks, Forestry and Recreation.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

At its meeting of October 26, 27, 28, and 31, 2005 City Council adopted Policy and Finance Committee Report 9, Clause 36, entitled “Soccer Stadium at Exhibition Place.” In accordance with Council authority, Exhibition Place, the City and MLSE entered into agreements for the construction and operation of the BMO Field at Exhibition Place.

(City Council Dec. Doc.– Policy and Finance Committee Report 9, Clause 36)

<http://www.toronto.ca/legdocs/2005/agendas/council/cc051026/cofa.pdf>

At its meeting of September 30, and Oct 1, 2009 City Council adopted Item CC40.8, entitled “Upgrades to BMO Field at Exhibition Place and Allan Lamport Stadium,” which proposed a number of upgrades to soccer facilities in Toronto. These upgrades included consent to the request by Maple Leaf Sports & Entertainment (“MLSE”) for the replacement of artificial grass at the BMO Field with natural grass on the requirement that MLSE fund and undertake the relocation of the winter bubble from the BMO Field to Lamport Stadium and the installation of an artificial turf field at Lakeshore Collegiate, a TDSB high school located adjacent to the City Land. The Lakeshore field will be reserved for use by the City during the months of July and August and has been proposed and accepted by the Provincial and Federal governments as a condition of their approval of the change to BMO Field requested by MLSE in order to ensure that facilities will continue to be available for community sports purposes.

(City Council Dec. Doc. – Item CC40.8)

<http://www.toronto.ca/legdocs/mmis/2009/cc/decisions/2009-09-30-cc40-dd.htm>

The proposed change in use of the City Land conflicts with some of the terms in the Birmingham Lease and as such TDSB has requested an amendment to this lease.

## **ISSUE BACKGROUND**

In an effort to attract a larger number of soccer matches involving international teams, MLSE proposed to convert BMO Field from artificial turf to natural grass. Since a natural grass field cannot be maintained under a bubble, the winter bubble was relocated from BMO Field to Lamport Stadium and will continue to be operated for community

sports purposes. MLSE also committed to installing a new artificial turf field at Lakeshore Collegiate. As a result of the proposal by MLSE, the City and MLSE were required to obtain the consent of the Provincial and Federal governments to the change to BMO Field, which was funded in part by the Province and Federal government. That consent has now been obtained, subject to finalization of the required amendment to the funding contribution agreement entered into originally between the City, Ontario and Canada.

Lakeshore Collegiate is adjacent to the lands governed by the Birmingham Lease. The Birmingham Lease constitutes one of two long term lease agreements entered into between the City and TDSB as part of a lease exchange arrangement relating to this precinct. The other lease included in that exchange is the Arena Ground Lease for the lands known municipally as 400 Kipling Avenue, which the City has sublet to Lakeshore Lions Arena Incorporated. The proposed project and agreement conflict with some sections of the Birmingham Lease and, as a result, TDSB is requesting that the Birmingham Lease be amended to permit the proposed use. The required amendments to the Birmingham Lease include an expansion of the permitted uses, and changes to the maintenance and permitting arrangements for the City Land.

## **COMMENTS**

Currently, the grounds covered by the Birmingham Lease are maintained by the City and TDSB. The proposed sublease agreement with NRI will essentially eliminate any maintenance costs the City is incurring to maintain these grounds. In addition, the City will not be required to spend any money for the construction or operation of the new facilities, as MLSE and NRI will be responsible for these costs.

The TDSB considered different scenarios for maximizing the use of this new artificial turf field, and one option was to construct an inflated dome enclosure over the artificial turf field. The dome would be in place for the winter months from November to April and removed during the remainder of the season.

In anticipation of the new field, TDSB released a Request for Proposal seeking a partner in the installation and operation of an inflatable structure to support the operations of the artificial turf, the successful proponent of the RFP was Nustadia Recreation Inc. This will allow the new field to be used all year round by the TDSB, which has agreed to require NRI to manage the field according to the City's requirements during the months of July and August in order to satisfy the Provincial and Federal requirements.

Upon review of the Birmingham Lease it was noted that amendments would be required to permit this use. The amendments to the Birmingham Lease will enable TDSB to enter into a sublease agreement with NRI to install the Soccer Field and Dome, and reconfigure and manage the site. NRI will relocate the existing football field to a location immediately north of the Soccer Field and Dome. It will construct a fence around the Dome, and a small access building which will control access to the Soccer Field. This building will contain change rooms, washrooms, a small office and ancillary space.

The fields will be used for community sport purposes including field sports such as football and soccer. NRI and the Tenant will be responsible for all costs of construction and installation and will be entitled, subject to the City's rights during July and August, to retain all revenues derived from the operation of the fields. TDSB will not be charged for its use of the fields, however, they will be responsible for the maintenance of the football field.

This new sublease agreement between TDSB and NRI will provide greatly needed year round recreational space for Lakeshore Collegiate, and the community.

The proposal to construct a new field at Lakeshore Collegiate for TDSB and City use has previously been approved by Council. However, that approval did not include a specific recommendation to amend the Birmingham Lease to permit the Soccer Field and Dome. In addition, the chosen site includes two underground sewer mains which must be protected during construction and Toronto Water also requires the ability to access these sewer mains in cases of emergency or for repair/replacement purposes without incurring any liability or cost to the City. Time is of the essence, as there is currently a requirement pursuant to the discussions that the City has had with the Province and the Government of Canada that the artificial turf for the Lakeshore field be installed by October 1, 2010.

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## **SIGNATURE**

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Bruce Bowes, P.Eng.  
Chief Corporate Officer

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Brenda Patterson  
General Manager  
Parks, Forestry and Recreation

## **ATTACHMENTS**

Appendix "A" Location map and proposed layout