

**CORPORATION OF THE CITY OF PORT COQUITLAM**

**PARKS & RECREATION COMMITTEE**

A meeting of the Parks & Recreation Committee was held in the Parks and Recreation Office on September 2, 1993 at 8:30am.

In attendance was Councillor Mike Thompson.

Also, in attendance was Larry Wheeler, Recreation Manager/Deputy Director.

**Item No. 1 Construction Management Contract**

- ° Reviewed information received from Mierau Construction and the City's solicitor. Staff were instructed to work with the City's solicitor to further clarify some of the contract terms and to investigate wrap-up insurance.

Carried

**Item No. 2 Street Games Policy**

- ° Reviewed information received from Chris Murdy. Staff were instructed to work with the City's solicitor to further clarify the wording of the proposed policy.

Carried

**Item No. 3 Reeve Park - Estimate For Basketball Court**

- ° Reeve Street Project Manager provided a cost estimate of approximately \$25,000 to pave the remaining area at the tennis courts for use as basketball courts. Received as information.

Carried

**Item No. 4 PoCo Trail - Terms of Reference**

- ° Wording of the terms of reference was approved. Staff were authorized to distribute to select list of trail designers.

Carried

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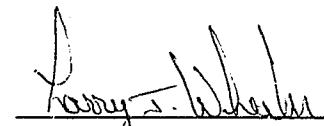
**Item No. 5 Capital Works Projects**


- ° Deferred to future meeting.

Carried

**ADJOURNMENT**

  
M. Thompson, Chairperson

  
L. Wheeler, Secretary



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**Mierau**  
CONSTRUCTION LTD.

# 201 - 31157 Peardonville Rd. Abbotsford, B.C. V2S 5W6

Phone: 850-3536

Fax 852-5929

August 30, 1993

THE CORPORATION OF THE CITY OF PORT COQUITLAM  
PARKS & RECREATION DEPARTMENT  
2253 Leigh Square  
Port Coquitlam, B.C.  
V3C 3B6

Attention: Janna Taylor, Parks & Recreation Director

Dear Janna:

Re: Construction Management Services

We have received your memorandum dated August 24, 1993 requesting further information and clarification. We are pleased to provide the information as follows:

A) Reimbursable Costs

1) Our fixed fee includes:

Off-site:

- All of our head office resources including senior management personnel as well as other administrative staff.
- All normal stationery and supplies.

On-site:

- Site office facilities consisting of two rooms with telephones, photocopier, fax and furnishings.
- Project Superintendent- full time for the duration of the construction phase.
- Superintendent vehicle and vehicle expenses.
- All normal stationery and supplies.

2) Reimbursable Expenses:

Appendix 'A' is a standard part of the CCA5-1988 contract form. The purpose is to establish work which is not covered in the Construction Management scope and set up a means by which it could be done as a reimbursable expense.

I assure you that there are no surprises or hidden costs associated with this Appendix. No expenditures or reimbursable expenses can be made without the prior agreement and authorization of the City of Port Coquitlam as is set out in the general conditions.

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Some examples of typical reimbursable expenses are:

-Advertising Costs- costs of placing tender advertisements in local papers. This could be arranged and paid for by the City directly or we could look after it as a reimbursable expense.

-Blue Print Costs- Normally the consultants look after blue prints, but it may be more efficient for the consultants to provide sepia prints and we look after the printing. On the Matsqui Recreation Centre, Matsqui looked after the printing directly.


-First Aid Attendant- We will attempt to set up the trade packages so that there is always an Industrial First Aid Attendant provided by a trade contractor. However, at some point this may not be possible or feasible due to the dates of start and finish of each package. In this case we could provide an IFA person, or the City could provide one, on an interim basis. An IFA person is required when continuous work forces exceed fifteen persons.

-First Aid Facilities- When work forces exceed thirty-five persons, a totally separate, fully equipped first aid trailer will be required. We will not put this requirement into a trade package, as it wouldn't be practical, but we will budget for the cost of a rental. We can provide this facility as a reimbursable cost or the City can provide or rent it directly.

The point I am trying to make is the Appendix "A" does not give us license to expend large sums of extra money. It is a tool which, under certain circumstances, will facilitate the completion of the project. In all cases, the owner, not the Construction Manager has control of expenditures.

### 3) Superintendence

The City's solicitor has raised a concern that superintendence is only allowed for twelve months whereas the contract duration is sixteen months. The answer to this is that on site superintendence is required only during the actual construction phase which we expect to be twelve months. The pre-construction and post-construction phases do not require site supervision.

  
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B) Insurance Requirements

It is important to distinguish between a Construction Manager and a General Contractor. Whereas a General Contractor has a contract to perform work, a Construction Manager is retained to represent the owner and manage all aspects of the construction on behalf of the owner. As a result, the Construction Manager is more like a consultant than a general contractor. Neither a General Contractor or a Construction Manager is responsible for the design of the project, which is why you have a design consultant.

You will have numerous trade contracts (probably twenty to twenty-five) which will be issued on a modified CCDC 2 Stipulated Price contract format. Unmodified, this contract requires the trade contractor to provide Property Insurance and General Liability insurance. Due to the impracticability of each trade providing separate property insurance, we recommend that the owner provides the property insurance with provision that any trades making a claim are responsible to pay the deductible. The provision that the trade provide general liability insurance could be retained as is or modified to the specific needs of the city based on your underwriter's recommendation.

I hope that this letter has satisfied your concerns. If there is anything I have not dealt with adequately, please don't hesitate to call.

We trust you will find the above to be in order, and we remain;

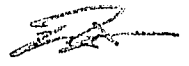
Yours Truly

MIERAU CONSTRUCTION LTD.



for: Doug Margison  
Project Manager

DM/tt

  
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**CITY OF PORT COQUITLAM**

**Memorandum**

August 24, 1993

To: Doug Margison, Project Manager

From: Janna Taylor, Parks & Recreation Director

Subject: Construction Management Contract

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Thank you for sending the contract so promptly. The City's solicitor has reviewed the contract and has made several observations. There are several areas which he is concerned with. I will briefly identify them and send you a copy of his letter.

**Reimbursable Expenses**

It would be best if you could identify more clearly what the \$254,200 covers and also identify what the reimbursable expenses are.

**Insurance Requirements and Indemnities**

The City's solicitor has outlined some general comments in regards to the above. Could you review the comments and give me your thoughts.


Part of the solicitor's concern is that the concept of construction management is new and he wants to ensure the City is protected.

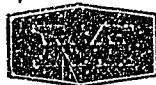
Please give me a call at 944-5452 and we can discuss this further.



Janna Taylor  
Parks & Recreation Director

/ss

  
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**Mierau**  
CONSTRUCTION LTD.

# 201 - 31157 Peardonville Rd. Abbotsford, B.C. V2S 5W6

Phone: 850-3536  
Fax 852-5929

August 16, 1993

PORT COQUITLAM PARKS AND RECREATION DEPARTMENT  
City of Port Coquitlam  
2253 Leigh Square  
Port Coquitlam, B.C.  
V3C 3B8

Attention: Janna Taylor

Dear Madame:

Re: Hyde Creek Recreation Centre

As per our telephone discussion, we have prepared and are attaching two (2) copies of the proposed Construction Management Contract for your review.

Don't hesitate to call if you have any questions or comments.

Thank you very much for recommending our firm for the Construction Management Services. We look forward to being a part of the team and we remain;

Yours Truly

MIERAU CONSTRUCTION LTD.

Doug Margison  
Project Manager

DM/dm

cc: Larry Mierau

SEP 02 1993

# MACKENZIE MURDY & McALLISTER

BARRISTERS & SOLICITORS

FAX (604) 689-9029  
TELEPHONE (604) 689-5263

31<sup>ST</sup> FLOOR FOUR BENTALL CENTRE  
1055 DUNSMUIR STREET  
P. O. BOX 49059  
VANCOUVER, CANADA V7X 1C4

August 23, 1993

VIA FAX

K. Janna Taylor  
Parks & Recreation Director  
City Hall  
Port Coquitlam, B.C.  
V3C 2A8

Dear Janna:

Re: Proposed Construction Management Contract  
Our File No. 2406

Further to our August 19, 1993 letter, we have now reviewed the draft Construction Management Contract which the City is proposing to enter into with Mierau Construction Ltd.

You have requested us to review the Contract with the Parks and Recreation Committee, which we will do on Thursday August 26, 1993 at 8:30 a.m.

To facilitate that meeting, we have set out below several general comments regarding the agreement for the purposes of our discussion.

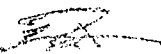
The draft Contract indicates that it is a standard document and so appears to cover adequately the intended scope of the services for which the City is contracting. The Contract is therefore also likely to be understood in the industry in terms of each party's role and responsibilities.

On the basis of the background report presented by Larry Wheeler, it seems that Council has a good understanding of the distinction between the Construction Management and General Contractor approaches to contracting such projects.

Some of the points and concerns which you may wish to discuss at the Committee meeting are:

I. PAYMENT

The Contract provides in Article A-5 for a basic contract fee of \$254,200 -- we have no idea as to whether that is a fair price for the work intended, but if it is consistent with other bids you received, then that should provide some measure of comfort.

  
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August 23, 1993

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Our concern with the payment is that it is exclusive of G.S.T. which is of course simple to estimate but is also exclusive (pursuant to Article A-6) of reimbursable expenses.

The difficulty with the reimbursable expenses, which are set out in Appendix A, is that they are extremely broad and seem to leave open the possibility of large additional costs for the City. It may well be that in your discussions with the proposed Construction Manager that there has been some estimate or further clarification of the expenses, but if not, it may be something you would want to explore.

For example, the description of the reimbursable expenses provides that the only wages that are included are those of the project superintendent for a twelve month period, with all additional months to be charged at \$9,000 per month. This provision itself could lead to a significant "extra", in that Article A-2 indicates that the Contract Time is sixteen months. Apart from that one person, all wages, benefits and salaries for personnel are an additional cost to be charged to the City.

In addition, you will see from Appendix A that there are twenty five specific categories of expenses recoverable with the last such category being a "catch-all", including all such other costs directly incurred and including, for example, that of having a first aid attendant.

Appendix A, which defines reimbursable expenses, concludes with the statement that:


"It is the intention of the parties that the items referred to herein shall cover and include any and all costs and contingencies incurred by the Construction Manager in connection with the Project."

Although many of the listed reimbursable expenses may well be fair additional charges to the City, the Committee should be aware of the broad nature of these additional charges and there should perhaps be some discussion with the proposed Construction Manager of exactly what impact this may have for the City, particularly for budgeting purposes.

II. OWN FORCES WORK

You expressed a concern regarding the City's intention that the Construction Manager not be permitted to bid on any of the major work.

This is probably not going to be a problem in that Article A-7 only allows the Construction Manager to perform work with his own forces with the City's approval. The City could make



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**MACKENZIE MURDY & McALLISTER**

it clear in advance of entering into this agreement that it will not give its approval for any performance by the Construction Manager of major works.

III. ENTERING INTO CONTRACTS

You indicated a concern that each contract need not go to Council for approval, as that may cause construction delays.

General Condition 3 provides that the Construction Manager is to arrange for contracts between the City and trade contractors: "in accordance with the direction of the (City)".

If, as you suggested, the City wanted to simply utilize the City's standard purchasing policy, the authorizing resolution to enter the Contract could, in addition, direct that contracts for the performance of the work between the City and trade contractors shall be entered into pursuant to the City's standard purchasing policy.

The impact of such a direction would be that Council would only have to approve contracts of a value in excess of \$50,000. The Committee should also be aware of the tendering requirements and involvement of the City's Purchasing Manager as set out in that policy.

IV. INSURANCE REQUIREMENTS AND INDEMNITIES

(a) Contractual Provisions

General condition 4.7 provides that the City must provide, maintain and pay for the insurance coverage listed in General condition 17.


General condition 17 then obligates the City to insure for the purposes of indemnifying the Construction Manager against any liability.

You will want to ensure prior to entering into the Contract that the City is able, either through the Municipal Insurance Association or otherwise, to comply with this contractual agreement.

You should as well be aware that General conditions 14 through 16 which deal with releases and indemnities are certainly drafted in favour of the Construction Manager.

For example:

- (a) General condition 14 provides that the City releases the Construction Manager from all claims that might arise from the negligence or breach of

  
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contract by the Construction Manager except for those specifically listed and imposes a one year limitation period from the date of substantial performance for claims to be brought;

- (b) General Condition 15 provides that the City must indemnify the Construction Manager against all claims except those that are attributable to acts or omissions of the Construction Manager which constitute a breach of the contract; and
- (c) the Construction Manager is obligated in General Condition 16 to indemnify the City against claims but we note that that indemnity is worded more restrictively than the indemnity in favour of the City, in that the claims must be made in writing within a period of one year from the date of substantial performance and in addition, the obligation of the Construction Manager to indemnify the City is limited to the amounts which are recoverable under insurance maintained pursuant to General condition 17 (which is to say, the insurance arranged and paid for by the City).

(b) Additional Insurance Issues

One area members of the Committee might want to discuss, and an area where Councillor Thompson may have some helpful suggestions, is that of protection that might be available to the City in completing this project.

If there was to be a General Contractor, the City would in all likelihood require general comprehensive liability insurance and some sort of wrap up insurance or performance bond.


Here the City is, in effect, acting as a General Contractor for the purposes of ensuring completion of the project.

For example, you will note that General Condition 2.1 provides that the Construction Manager assumes no responsibility for design of the project, including architectural or engineering aspects.

Accordingly, you may wish to explore with the City's insurance advisors whether any additional insurance is available and if so, what would be desirable in order to protect the City.

V. TERMINATION BY THE OWNER WITHOUT CAUSE

General condition 7.1 provides that if the City abandons the Contract in the construction phase it is obligated to pay a loss of income amount to the Construction Manager of five percent

  
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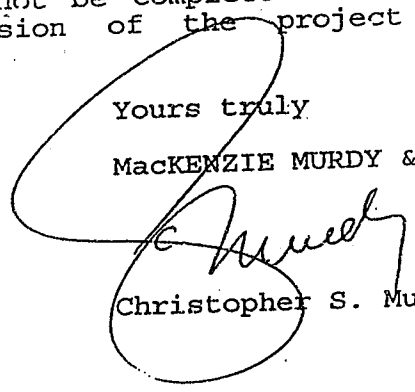
of the contract fee. This Section also provides that if the project is abandoned in the design phase the entire design stage fee of \$30,000 is payable.

These amounts are also payable, pursuant to General Condition 8.5, where it is the Construction Manager which terminates the Contract.

These loss of income compensation clauses can be a concern to local government when it is embarking on a project for which the funding may not be complete because in such a case, abandonment or suspension of the project is a realistic possibility.

Yours truly

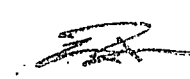
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Christopher S. Murdy

CSM/am

cc: Bryan R. Kirk, City Administrator



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# MACKENZIE MURDY & McALLISTER

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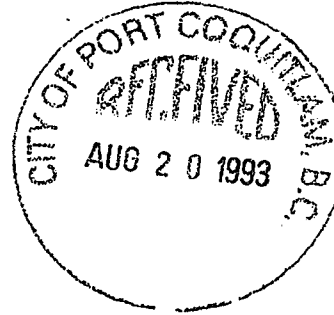
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31<sup>ST</sup> FLOOR FOUR BENTALL CENTRE  
1055 DUNSMUIR STREET  
P. O. BOX 49059  
VANCOUVER, CANADA V7X 1C4

August 19, 1993

VIA FAX

Larry L.J. Wheeler  
Recreation Manager  
City Hall  
Port Coquitlam  
V3C 2A8



COPY

Dear Larry:

Re: Street Games  
Our File No. 1262

Further to your request, we have reviewed your June 30, 1993 memorandum to Committee regarding a policy review of the City's approach to street games.

You indicated that the Committee would like to consider whether wording should be added to the Bylaw or a policy adopted to give the City some direction in relation to complaints that may be received regarding street games.

## I. SEVERAL INITIAL COMMENTS

Prior to discussing this issue in more depth, we have several general comments on topic, expanding on the materials you forwarded to us, as follows:

1. this issue is, as you indicated, quite a sensitive one which, if not properly handled, could generate considerable ill will in the City -- you will recall within the last several years the public relations problems faced by your neighbours in Coquitlam when it attempted, or was perceived as attempting, to prohibit street hockey; and
2. it is possible to distinguish between issues which involve construction of fixtures (such as the difficult issue Council had to deal with regarding the basketball hoop at Homesteader Court) from those involving things like street hockey or other street games.

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## II. MUNICIPAL ACT AUTHORITY

The Municipal Act does provide the City with authority to regulate in this area if it so chooses.

Section 582(1) (a) provides that Council may by bylaw regulate:

"all uses of or involving a highway or portion of it other than (traffic uses)."

Section 582(1.1) goes on to provide that:

"Except as permitted by a bylaw under subsection (1), no person shall... cause a nuisance on ... (or) obstruct... any portion of a highway".

Accordingly, it is arguably the case that nothing is required by Council at this stage to regulate in the area, in that the Municipal Act already precludes obstruction of a highway unless a bylaw so permits such a use.

## III. THE CITY'S BYLAW


In looking at Section 501 of the City's Traffic Regulation Bylaw No. 1117 which you referred to in your memorandum, Council has adopted a Section which is actually fairly close to the effect of the above captioned legislation.

That Section precludes people from being present on a highway so as to obstruct free passage of pedestrians or vehicles except with written permission of the Council.

## IV. POLICY SUGGESTION

If you wanted to consider wording for a policy related to enforcement of the Municipal Act and Bylaw 1117, in line with your summary of Committee's preferred approach, perhaps you might wish to consider something along the following lines:

1. Permanent structures shall not be placed on public property or highways (including dedicated road or boulevard adjacent to the travelled portion of a highway) without the prior consent of the City. Such consent shall not be given where the use of such structures could unreasonably interfere with traffic or cause safety concerns.

  
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MacKENZIE MURDY & McALLISTER

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2. The Council will not give permission for use of collector streets for use for street games.
3. With respect to streets other than collector streets, the City will not enforce the provisions related to obstruction of a highway, unless a written complaint is received. Where a complaint is received, staff should be directed to investigate as to whether a nuisance has been caused or traffic obstructed.

Yours truly


MacKENZIE MURDY & McALLISTER

COPY

Christopher S. Murdy

CSM/am

cc: Bryan R. Kirk, City Administrator  
✓ Janna Taylor, Parks & Recreation Director



SEP 02 1993

Mrs. M. Henderson  
1151 Settlers Court  
Port Coquitlam, BC  
V3C 5Y5  
August 17, 1993

City of Port Coquitlam  
Parks and Recreation Department  
2253 Leigh Square  
Port Coquitlam, BC


Attention: Parks and Recreation Committee

RE: Street Games

I am writing with regards to the problems encountered with the constant presence of street games on our cul-de-sac in Citadel Heights.

We do not wish to spoil the fun of children in our neighbourhood, but have put up with a lot of problems encountered by them playing street hockey and baseball. We have anywhere from 10 to 20 kids at any given time playing right in front of our house, where our car is parked. They have hit balls against the car many times, as well as banged it with their sticks while skating, or banged sticks under the car to retrieve their ball. They sit on the car and lean against it, even though we have asked them not to. They run through our gardens and lawns on their roller blades even though we have asked them to be more careful. They refuse to move the net when we are trying to get by and also move only slightly when we are backing out of the driveway. When we walk to get our mail from the superboxes, they either continue to play around us, or they stop and stare until we are finished. The majority of the kids playing hockey on our street don't even live here. They come from all the other streets because it is a quiet cul-de-sac where there isn't much traffic. Isn't it coincidental that we paid prime price for our house so we could live on a quiet, desirable cul-de-sac? Our neighbours across the street moved this summer, partly because they were very annoyed by the lack of respect shown for their property. These kids have admitted that they were kicked off their own streets so have to play on ours. Aren't we the lucky ones!

Now for the damage report. As mentioned earlier, we have marks on our car from sticks and balls. Worse damage was produced on our van, when a boy on a bike ran into a goal net and then hit the back



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of our parked van, scraping it badly. We didn't ask for any payment. The final damage happened last week. I was in our front room when I heard a loud noise and ran outside to see what had happened. All the kids were laughing, but some stopped as soon as they spotted me. One boy about 14 years old said "the blade just slipped off my stick when I hit it". His blade had flown all the way from the middle of the street on an angle, and hit the top board of our siding, just under our front windows, leaving damage on the siding. That could just as easily have hit a small child, possibly causing that child to lose an eye or get a concussion. When I told him he had damaged the siding, he just said "no way", and wanted me to prove it, so I did. When he saw the damage, he realized I was serious but still couldn't see why we don't want them playing there any more. Again, we didn't ask for payment, didn't even mention it to his parents, but if something isn't done soon, we will need to speak to his parents about the problem. He isn't the only one who has been a problem by any means, but he is the most recent to cause damage and has also been a problem in the past.

We have asked them many times to please move somewhere else, preferably to a park or a parking lot where they could play without hurting anyone, damaging property and causing a lot of hassle for residents. They sometimes listen for a day or two, then are back at it again. What are we supposed to do? I think we have been very easy on them, but can't continue to absorb the costs as well as the annoyance involved. As well as hockey, they are now playing baseball. Some of those kids can definitely hit that ball hard enough to cause damage.

We have no objection to them having a basketball hoop, as long as they move when cars come by and when people walk to pick up their mail from the superboxes. But hockey and baseball, and maybe even basketball will need to be forbidden since the kids just refuse to have any consideration for their neighbours and the property involved. It's about time that parents once again took the time to get involved with their kids by taking them to a park or a rink somewhere rather than just letting them take over the streets.

I know I am not alone in my feelings regarding this situation. Will some little child have to be hurt badly before anything is done to forbid street games? I certainly hope not. Please pass a law to outlaw them before it is too late.

I would appreciate a reply regarding this matter. Thank you.

Sincerely,

*M. Henderson*

Marilyn Henderson



SEP 02 1993