Agenda - Executive Policy Committee - November 29, 2006

Report - Standing Policy Committee on Property and Development - November 14, 2006

Item No. 11 Henteleff Park Development and Management Agreement
File PR-7(35)

STANDING COMMITTEE RECOMMENDATION:

On November 14, 2006, the Standing Policy Committee on Property and Development concurred in the administrative recommendation, as amended, and submits the following to Council:

1. That the terms and conditions of the Henteleff Park Development and Management Agreement, attached as Appendix A to the report from the Director of Planning, Property and Development dated October 27, 2006, be approved, with the following amendments, namely:

    A. That Paragraph 6b. (ii)E. be deleted in its entirety and the remaining paragraphs renumbered accordingly.

    B. That Paragraph 6 i. be deleted in its entirety and the remaining paragraphs renumbered accordingly.

    C. That Paragraph 10. be deleted in its entirety and the remaining paragraphs renumbered accordingly.

    D. That Paragraph 17 (renumbered as Paragraph 16) be deleted and the following substituted therefore:

        "16. In the event of any disagreement between the representatives of the City and the Foundation in respect to matters arising in the Steering Committee, such disagreement may first be referred to the Chief Administrative Officer for consideration and if not resolved to the satisfaction of either party, then to the appropriate Standing Policy Committee."

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

Pursuant to Section 205(2) of The City of Winnipeg Charter, disposal of land owned or acquired by the City for park or cemetery purposes requires approval by two-thirds of all Members of Council.

Agenda - Executive Policy Committee - November 29, 2006

Report - Standing Policy Committee on Property and Development - November 14, 2006

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On November 14, 2006, the Standing Policy Committee on Property and Development concurred in the administrative recommendation, with the following amendment, namely:

- That Paragraph 6b.(ii)E. be deleted in its entirety and the remaining paragraphs renumbered accordingly.
- That Paragraph 6 i. be deleted in its entirety and the remaining paragraphs renumbered accordingly.
- That Paragraph 10. be deleted in its entirety and the remaining paragraphs renumbered accordingly.
- That Paragraph 17 (renumbered as Paragraph 16) be deleted and the following substituted therefore:

    "16. In the event of any disagreement between the representatives of the City and the Foundation in respect to matters arising in the Steering Committee, such disagreement may first be referred to the Chief Administrative Officer for consideration and if not resolved to the satisfaction of either party, then to the appropriate Standing Policy Committee."

and the remaining paragraphs renumbered accordingly and forwarded to the Executive Policy Committee and Council.

STANDING COMMITTEE DECISION:

On April 11, 2006, the Standing Policy Committee on Infrastructure Renewal and Public Works did not concur in the February 28, 2006, recommendation of the Riel Community Committee, namely:

1. That the request from Mr. Yude Henteleff, President, Henteleff Park Foundation Inc., to remove the fencing constructed by the City of Winnipeg at Henteleff Park be considered favourably in light of the fact that similar fencing does not exist in any other major park in the City of Winnipeg

2. That the Administration be directed to identify a funding source and provide a timeline for the relocation of the tree nursery located at Henteleff Park and recommended that the administration investigate installing other fencing options in order to replace the existing snow fence.

Report - Standing Policy Committee on Property and Development - November 14, 2006

DECISION MAKING HISTORY:

STANDING COMMITTEE DECISION (continued):

On September 8, 2003, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendation that the city-owned park located at 1964 St. Mary's Road be formally named "Henteleff Park".

COUNCIL DECISION:

On January 29, 2003, Council concurred in the recommendation of the Standing Policy Committee on Property and Development to rezone the land at 1964 St. Mary's Road to a "PR-2" Parks and Recreation District.

STANDING COMMITTEE RECOMMENDATION:

On May 27, 2002, the Standing Policy Committee on Property and Development referred the following motion of the Riel Community Committee dated May 14, 2002, to the Administration for appropriate action, namely:

> WHEREAS the Friends of the Henteleff Nursery wish to enter into an agreement of association with the City of Winnipeg with regard to the development and maintenance of an Interpretive Centre and Arboretum at the Henteleff Nursery site in conjunction with the nursery operation and have provided the Riel Community Committee with a proposed concept plan in that regard;
>
> AND WHEREAS the Riel Community Committee is interested in such an association and establishing the Henteleff Nursery as a park including an Interpretive Centre and Arboretum;
>
> AND WHEREAS the Community Committee is of the opinion that such a development can be established in conjunction with the City of Winnipeg Nursery Operation;
>
> THEREFORE BE IT RESOLVED that the Standing Policy Committee on Property and Development direct the Administration to review the concept plan for the proposed development submitted by the Friends of the Henteleff Nursery, to initiate the process to have the total area owned by the City of Winnipeg rezoned as a park, to consider the terms of a working relationship with the Friends of the Henteleff Nursery and report back to the Riel Community Committee.

RE: Henteleff Park Development and Management Agreement

FOR SUBMISSION TO: Standing Policy Committee on Property and Development

ORIGINAL REPORT SIGNED BY: Director of Planning, Property and Development

REPORT DATE: October 27, 2006

RECOMMENDATION:

That the terms and conditions of the Henteleff Park Development and Management Agreement, attached as Appendix A, be recommended for approval and forwarded to Council.

Report Summary

Key Issues:

- The Henteleff Park Foundation has agreed with the draft form of Development and Management Agreement excluding agreement that approval from the Director of Public Works is required regarding the material displayed within the Interpretive Centre and other matters related to the operation of the Interpretive Centre.

- The agreement includes a lease of park land, for an interpretive centre, for a term of 25 years, with an option to renew for an additional 25 years, which will require the approval of Council by a 2/3 majority.

Implications of the Recommendation(s):

General Implications

( ) None

(X) For the organization overall and/or for other departments

(X) For the community and/or organizations external to the City

( ) Involves a multi-year contract

Comment(s): The agreement includes a lease of land on which the Interpretive Centre will be located for a 25 year term, with an option to renew for a further 25 years.

Policy Implications

(X) No

( ) Yes

Comment(s):

Regulatory Implications

(X) None

( ) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s):

Environmental Implications

( ) No

(X) Yes

Comment(s): Approval of the Development and Management Agreement will allow the establishment of a collaborative relationship between The Henteleff Park Foundation and the City for the purpose of protecting and enhancing the Ecologically Significant lands within Henteleff Park.

Human Resources Implications

() No

(X) Yes

Comment(s): City of Winnipeg staff will be required to participate on the various Henteleff Park committees (Liaison, Steering etc.)

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s): The Development and Management Agreement has no financial implications. However, development of the Park according to the Park Frame Work Plan may require the City's financial participation in the future.

Report

REASON FOR THE REPORT:

At its meeting on May 27, 2002, the Standing Policy Committee on Property and Development referred the proposed “Agreement of Association between the City of Winnipeg and the Friends of Henteleff Nursery for the development and maintenance of an Interpretive Centre and Arboretum at the Henteleff Nursery Site,” to the Administration for appropriate action.

HISTORY:

At its meeting on May 14, 2002, the Riel Community Committee passed the following motion:

> WHEREAS the friends of the Henteleff Nursery wish to enter into an agreement of association with the City of Winnipeg with regard to the development and maintenance of an Interpretive Centre and Arboretum at the Henteleff Nursery site in conjunction with the nursery operation and have provided the Riel Community Committee with a proposed concept plan in that regard;
>
> AND WHEREAS the Riel Community Committee is interested in such an association and establishing the Henteleff Nursery as a park including an Interpretive Centre and Arboretum;
>
> AND WHEREAS the Community Committee is of the opinion that such a development can be established in conjunction with the City of Winnipeg Nursery Operations;
>
> THEREFORE BE IT RESOLVED that the Standing Policy Committee on Property and Development direct the Administration to review the concept plan for the proposed development submitted by the Friends of the Henteleff Nursery, to initiate the process to have the total area owned by the City of Winnipeg rezoned as a park, to consider the terms of a working relationship with the Friends of the Henteleff Nursery and report back to the Riel Community Committee.

At its meeting on May 27, 2002, the Standing Policy Committee on Property and Development referred the above motion to the Administration for appropriate action.

On July 29, 2002, the Riel Community Committee considered the Administrations response and passed the following motion:

Whereas the Henteleff Nursery property has always been under the jurisdiction of the former Parks and Recreation Department and has been informally used by the public as a public open space for many years;

AND WHEREAS the City Naturalist and the Friends of Henteleff nursery have indicated that the subject land is a good quality natural area, well worthy of being rezoned to a Parks and Recreation District for future protection;

AND WHEREAS the Friends of the Henteleff Nursery wish to enter into an agreement of association with the City of Winnipeg with regard to the development and maintenance of an Interpretive Centre and Arboretum at the Henteleff Nursery site in conjunction with the nursery operation;

AND WHEREAS the Riel Community Committee is interested in such an association and establishing the Henteleff Nursery as a park including an Interpretive Centre and Arboretum;

AND WHEREAS the Community Committee is of the opinion that such a development can be established in conjunction with the City of Winnipeg nursery operation;

THEREFORE BE IT RESOLVED that the Standing Policy Committee on Property and Development direct the Administration to initiate an application to rezone the subject property from an “A-5” Agricultural District to a “PR-2” Parks and Recreation District;

BE IT FURTHER RESOLVED that the Standing Policy Committee on Property and Development direct the Administration to Initiate an application for a Conditional Use to allow for the tree nursery operation (Public Works Yard) on the subject property.

On September 10, 2002, the Standing Policy on Property and Development concurred in the Riel Community Committee’s recommendations and recommended:

That the Administration be directed to initiate an application to rezone the subject property from an “A-5” Agricultural District to a “PR-2” Parks and Recreation District.

That the Administration be directed to initiate an application for a Conditional Use to allow for the tree nursery operation (Public Works Yard) on the subject property.

On November 12, 2002, the Riel Community Committee approved both the rezoning and the Conditional Use for the Henteleff Nursery.

On January 29, 2003, Council gave final approval to the Henteleff Park rezoning.

At its meeting on September 8, 2003, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendation that the City-owned park located at 1964 St. Mary's Road (Henteleff Nursery) be formally named "Henteleff Park."

On February 28, 2006, the Riel Community Committee recommended to the Standing Policy Committee on Infrastructure and Public Works:

> That the request from Mr. Yude Henteleff, President, Henteleff Park Foundation Inc., to remove the fencing construction by the City of Winnipeg at Henteleff Park be considered favorably in light of the fact that similar fencing does not exist in any other major park in the City of Winnipeg.
>
> That the Administration be directed to identify a funding source and provide a timeline for the relocation of the tree nursery located at Henteleff Park.

At its meeting on April 11, 2006, the Standing Policy Committee on Infrastructure Renewal and Public Works did not concur in the recommendations of the Riel Community Committee and recommended that the Administration investigate fencing options.

DISCUSSION:

The agreement of association, which is the subject of this report, demonstrates how the principles outlined in Plan Winnipeg can be utilized to increase the quality of life for the citizens of Winnipeg. It sets up a plan for a collaborative relationship between the City and The Henteleff Park Foundation to expand and maintain the parks system (5C-01), promote the use of riverbanks (5C-02), protect environmentally sensitive lands (5C-04) and conserve heritage assets ((5B-01) within Henteleff Park.

The Henteleff Park Foundation Inc. (the old Friends of Henteleff Nursery) and the City of Winnipeg Administration have been negotiating an agreement of association for development of Henteleff Park. This agreement will constitute two formal agreement documents: a formal Development and Management Agreement; and a Framework Plan. The formal Development and Management Agreement will outline each group's roles and responsibilities for the development of the Frame Work Plan and future development and maintenance of Henteleff Park. The Frame Work Plan will be in map or plan format and will identify the location of significant features that will be developed in the park, and the timing of their development.

This report considers the Development and Management Agreement only. Negotiations regarding the detailed Frame Work Plan will commence once the Development and Management Agreement (DMA) is approved.

The parties to the DMA have been able to come to agreement regarding all issues excepting the issue regarding whether the material displayed within the Interpretive Centre should be subject to the prior approval of the Director of Public Works. (The proposed DMA is attached as Appendix A).

Because the Interpretive Center is managed by the Foundation, and the City manages the Park and Nursery, there is some concern over the potential for conflict between the positions of the two managers with regard to material displayed within the Interpretive Center. For example, in the past, differing views have existed with regard to issues such as relocation of the nursery, and reduction in warning signage. A condition in the agreement that makes displays subject to the approval of the Director of Public Works would provide the city with some assurance that the city's position will be protected should conflict arise. Thus, the Administration's position is that Clauses 6 E Page 10; Clause 6(i) page 12; and Clause 10, page 16 need to contain the condition that they be "subject to the prior approval of the Director of Public Works which approval will not be unreasonably withheld".

Financial Impact Statement Date: October 23, 2006

Project Name:

Henteleff Park Development and Management Agreement

COMMENTS:

The recommendation in this report is that the terms and conditions of the Henteleff Park Development and Management Agreement, attached as Appendix A, be recommended for approval and forwarded to Council. There are no financial implications associated with this recommendation.

"Original Signed By"
Mike McGinn, CA
Manager of Finance

2122

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Public Works Department

Legal Services Division of the Corporate Services Department

External Consultation With:

The Henteleff Park Foundation

THIS REPORT SUBMITTED BY:

Department: Planning, Property and development
Division: Planning and Land Use
Prepared by: Kevin Nixon, Park Strategic Planner
PPD File No.

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Appendix A

DEVELOPMENT AND MANAGEMENT AGREEMENT

Between:

THE CITY OF WINNIPEG
(hereinafter called the "City")

AND

THE HENTELEFF PARK FOUNDATION INC.
(hereinafter called the "Foundation")

WHEREAS the City is the owner of the lands in the City of Winnipeg in the Province of Manitoba legally described as follows:

(DESCRIPTION)

(the "Park Site")

AND WHEREAS the said lands have been zoned as a R.P. 2 (Park & Recreation) and are being developed for such purpose;

AND WHEREAS the City has named the Park Site "Henteleff Park";

AND WHEREAS it is the shared desire of the City and the Foundation to develop the Park as a passive park, which will include the implementation of the Framework Development Plan as set out in paragraph 2 herein;

AND WHEREAS in carrying out the framework and development plan, the implementation thereof shall be such as shall best sustain, enhance and display the natural surroundings including animal and bird life, tree and plant life and the creek and river habitats;

AND WHEREAS part of the Park Site has been set aside for the use thereof by the City as a tree nursery (the "Tree Nursery site") as shown on the Framework Plan and as permitted in accordance with the conditional use approval enacted by the City and the Tree Nursery site is currently being used for such purpose;

AND WHEREAS The Foundation is a non-profit charitable organization that has been established for the purpose of associating itself with the City in developing the Park, other than the Tree Nursery Site, to the extent as hereinafter set forth and to establish an Interpretive Centre on the front part of the Park bordering St. Mary's Road, all is hereinafter more particularly set forth;

AND WHEREAS the City has agreed that the Foundation may establish an interpretive centre on the Park Site as is hereinafter particularly set forth;

AND WHEREAS the Foundation may, in addition to the establishment of the Interpretive Centre, establish in the future other like projects ("other like projects") with accompanying structure(s) in the park such as the demonstration garden and green house project, subject to prior approval by the City.

AND WHEREAS the cost of implementing such other like projects including the interpretive centre and the maintenance, operation and management of the same shall be the sole and exclusive responsibility of the Foundation.

AND WHEREAS the City and the Foundation have agreed to enter into this Development and Management Agreement ("DMA") for the purpose of

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cooperating to prepare and implement the Framework Development Plan ("Framework Plan"), all as hereinafter set forth;

AND WHEREAS the Foundation must play a critical role in seeking and securing the funding necessary to implement the Framework Plan as hereinafter set forth, and it is in the City's interest that it does so.

NOW THEREFORE, THIS DMA WITNESSETH in consideration of the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the parties agree as follows:

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1. The preamble herein shall form an integral part of this DMA.
2. Definition of Terms

   (a) "Foundation" means The Henteleff Park Foundation Inc., the incorporated non-profit charitable organization, the party of the second part;

   (b) "City" means The City of Winnipeg , including all of its Departments such as the Department of Planning, Property and Development, which will be directly responsible for implementing the Framework Plan as hereinafter detailed'

   (c) "the Park" means that part of the Park Site exclusive of the Tree Nursery site;

(d) "the Park Site" means the total area of the Park and the Tree Nursery site;

(e) "the Tree Nursery site" shall mean that portion of the Park set aside to be used exclusively by the City for use as a tree nursery together with the agreed area for an administrative and equipment storage site as well the access road to gain access to the Tree Nursery site, all as identified on the Framework Plan;

(f) " Liaison and Assistant Liaison Officers" means the City employees responsible for liaising with the Foundation and its representatives on day-to-day matters;

(g) "Steering Committee" means the advisory and implementation committee established by the City and the Foundation and composed of representatives from the City, and the Foundation;

(h) "Framework Plan" as hereinafter defined.

(i) "Interpretive Centre Site" means the land leased by the City to the Foundation for The Henteleff Park Foundation Inc. Interpretive Centre;

(j) "Other like Projects" projects developed by the foundation for location within the Park which are of interest to users of the Park.

(k) "Passive Park" means a place for the public to enjoy quiet reflection and low impact recreation in a natural setting.

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3. Development of a Framework Plan

(a) The City and the Foundation agree to enter into this DMA for the purpose of determining their respective responsibilities in the development of the Park as a passive Park ("Park development") and of the Interpretive Centre other like projects located in the Park;

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(b) Each of the parties has secured professional services for the purpose of preparing a Framework Plan (the "Framework Plan") for the development of the park, which includes the location and implementation of the elements outlined in paragraph 3(e) below, the location of the Tree Nursery site within the Park and the location of the Interpretive Centre Site and parking lot within the Park;

(c) The parties will use their best efforts to arrive at an agreement in respect to the Framework Plan within a reasonable time following the execution of this DMA.

(d) Except as provided in Section 6 hereof, the City is responsible for the development and maintenance of the Park Site in accordance with the Framework Plan as approved by Council.

(e) The parties anticipate that the Framework Plan may contain some or all of the following elements ("Elements"):

(1) Recreation Trails;

(2) Entrance Interpretive & Orientation Signage;

(3) A limited number of unserviced shelter(s) and benches, picnicking and toilet site (s);

(4) A limited number observation points, including cul de sacs, to reduce visitor impact on sensitive habitats;

(5) Re-naturalization of the Park, which includes the significant extension of the existing forest of approximately five acres at the west end of the Site;

(6) Preservation, extension and re-naturalization of the riverbank forest;

(7) Rehabilitation of the creek including re-establishing water flow throughout the creek to the river and rebuilding culverts;

(8) Demonstration market garden and green house;

(9) Landscaping the entry area to the Park from St. Mary's Road up to the creek and establishing parking area thereon;

(10) Connecting to the Winnipeg Parkway System to the extent reasonably possible.

(11) Shelter for cross-country skiing adjacent to and forming part of the Interpretive centre, including a composting

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toilet for use by the public, including those attending the Interpretive Centre;

(12) Location of electrical, water and sewer connections to the Interpretive Centre; and

(13) Location, construction and maintenance of a parking lot for use by the public, including those attending the Interpretive Centre.

(f) The Framework Plan shall indicate the timing for implementation of the elements. The order of implementation may be changed by the majority agreement of the Steering Committee

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4. Operation of Park

Funding for the operation, maintenance, management and improvement of the Park, exclusive of the Interpretive Centre and other like projects, shall be the sole responsibility of the City. It is understood and agreed that unless the implementation of the Framework Plan requires otherwise, the standard for the operation, maintenance and management and improvement of the Park by the City shall be consistent with City standards for similar parks.

5. Funding of the Implementation of the Framework Plan

(a) The Foundation acknowledges and agrees that funding for carrying out of the Framework Plan, although being the responsibility of the City as set out in paragraph 3 (d) herein, is totally conditional upon the City being able to secure the funding necessary to implement the Framework Plan from the Province of Manitoba, the Government of Canada as well as from Foundations, the public and otherwise, in addition to the City's own resources available and approved for those purposes.

(b) It is understood that the Foundation will provide all reasonable support to the City to enable it to secure capital and operational funding in order to implement the Framework Plan.

(c) The Foundation will be solely responsible for establishing, maintaining and operating the Interpretive Centre and other like projects to be established in the Park.

(d) All funding received for the purposes of the implementation of the Framework Plan shall be used solely for the implementation of the Framework Plan.

6. Interpretive Centre

a. It shall be the Foundation's sole responsibility to fund and establish an Interpretive Centre to be located on the front portion of the Park bordering St. Mary's Road to the Park in accordance with the

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Framework Plan and within a three-to-five year time frame. To that end, the following shall be carried out by the Foundation:

b. The Foundation shall secure all necessary approvals, permits, etc.

(i) To have the original Henteleff house moved on to the site and to have the foundation prepared for that purpose or to have an alternate building constructed as an Interpretive Centre;

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(ii) The Interpretive Centre will focus its historical/heritage objectives so as to reflect the following, namely:

A. The history of the development of St. Vital as a market garden area;

B. The history of Métis habitation and development with particular emphasis on the Normand and Frobisher families;

C. The history of river traffic on the Red River;

D. The history of the development and use of the lands by the Henteleff family as a market garden and the history of Jewish farmers in Manitoba generally; and

E. The development of such historical and cultural records, including photographs, records and the like that will best illustrate and demonstrate the foregoing sub-paragraphs (A) to (D), subject to prior approval of

the Director of Public Works which approval will not be unreasonably withheld;

(iii) To operate the Interpretative Centre during the months of July and August, and such other times as the Foundation determine to be reasonable, and to hire staff for such purpose;

(iv) To develop and install outside all-weather demonstration Signs reflecting some of the foregoing cultural and historical matters;

c. The Interpretive Centre will be identified by an outside sign, satisfactory to the Director of Planning Property and Development, on the Interpretive Centre building as follows: "The Henteleff House Interpretive Centre" or such other name as approved by the Foundation;

d. It shall be the sole responsibility of the Foundation to secure funds to meet the costs of carrying out the foregoing including securing sufficient funds to be set aside as a permanent fund. The interest earned from such fund together with monies from government and other funding sources will fund the maintenance and operation of the Interpretive Centre including the hiring of staff.

e. Prior to commencing work on the Interpretive Centre Site, the Foundation must provide proof to the City of sufficient financial

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resources to have the foundation constructed and the Henteleff House moved on to the site or in respect to the construction of an alternate building if that should occur.

f. The operation of the Interpretive Centre shall be conducted in accordance with all applicable laws, acts, regulations and policies of the City.

g. The Foundation shall enter into a lease with the City for the leasing of the land upon which the Interpretive Centre is to be located, which lease will be substantially consistent with the terms as set forth in Schedule A attached;

h. All funds raised by the Foundation for the foregoing purposes shall be the sole property of the Foundation.

i. As part of the operation of the Interpretive Centre, the Foundation may carry on such activities therein, including distribution of informational and educational materials relevant to the physical and cultural setting of the Park, selling of articles and other like goods relating to the purposes for which the Interpretive Centre has been established, for the purpose of raising funds to carry on its activities including establishing a modest entrance fee to the Interpretive Centre, subject to prior approval of the Director of Public Works which approval will not be unreasonably withheld.

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j. The Foundation shall enter into Park Booking Use Agreement(s) with the City's Parks and Open Spaces Division, Public Works Department for any community events it is organizing to take place in the Park, other than those in respect of the Interpretive Centre and other like projects which may be established in the park. Tree planting and other similar activities being undertaken by the volunteers of the Foundation, and all activities arising in respect of the Interpretive Centre and other like projects, will not require Park Booking Use Agreements.

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7. Tree Nursery Site

The operation, management and maintenance of the Tree Nursery site shall be the sole responsibility of the City

8. Steering Committee

a. A Steering Committee shall be established by the City and the Foundation composed of 2 representatives appointed by the City from its staff, and 2 representatives appointed by the Foundation from its membership.

b. The duties and responsibilities of the Steering Committee shall be as follows:

(i) To consider and come to agreement in a timely manner, on a Framework Plan to be presented to Council for consideration and approval

(ii) To meet on a regular basis to consider the financial and other requirements necessary to carry out the Framework Plan as set in Section 3 herein;

(iii) At each meeting there will be an agenda item to hear any comments and/or concerns from other stakeholder groups.

(iv) To determine which elements in the Framework Plan shall be carried out in priority to other elements, keeping in mind that such developments should occur in a phased-in appropriately progressive basis;

(v) To organize/encourage programs in order to make the public, and in particular the local community organizations, aware of the Park and its Framework Plan;

(vi) To develop plans for involvement by members of the community as volunteers to enable them to effectively carry out the duties requested of them in the Park and to establish a Volunteer Sub-Committee for that purpose to be described as "The Friends of Henteleff Park";

(vii) To provide written progress reports to the respective parties on a regular basis;

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(viii) To carry out media and public relations programs so as to make the public aware, as widely as possible, of the development of the Park and the programs being carried on at the Park.

(ix) The Foundation and the City may make public announcements and hold official ceremonies and special events respecting the Park, subject to providing the other party with prior notice and the opportunity to participate in any announcements, ceremonies and special events.

(x) To do what is reasonably necessary to assure the implementation of the Framework Plan in a timely manner.

c. The Steering Committee shall meet at least four times yearly. Date, time place of meetings, and the agenda of such meetings, shall be jointly agreed upon by the Director of Public Works of the City of Winnipeg, and the President of the Foundation or their respective designates. The Chair of the Steering Committee shall alternate for each meeting between the President of the foundation and the Director of Public Works or their respective designates.

9. Annual Meetings

(a) Annual meetings of the Steering Committee shall be held to which the public shall be invited at a time and place that would encourage participation by the public.

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(b) The meeting shall be jointly chaired by the Director of Public Works and the President of the Foundation, or their respective designates.

(c) The Agenda for the meeting will be established by the Director and the President. The Director and the President will report on the activities that have taken place during the previous year at the Park, including a summary of the volunteer activities and the plans for the forthcoming year, both in advancing the Objectives and regarding programs.

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10. It is understood and agreed that the Foundation bears sole and exclusive responsibility for the establishment, maintenance and operation of the Interpretive Centre and other like projects subject to prior approval of the Director of Public Works which approval will not be unreasonably withheld

11. Liaison Committee

(a) It is the intent of the parties herein to maintain continuing close liaison between them for the purpose of monitoring and advancing in a timely fashion the implementation of the Objectives;

(b) The City shall appoint a Liaison Officer and the Foundation shall appoint an individual and the individuals so designated, or their respective designates, shall comprise the Liaison Committee;

(c) Liaison Committee shall meet regularly, as required, to review all activities being carried on or being planned for the Park, including

the carrying out of the Framework Plan in any given period, to monitor the activities of volunteers and to be mutually aware of the activities carried on by each of the parties;

(d) Any matters other than day-to-day activities, which are considered to be of a substantial nature shall be referred to the Steering Committee for consideration and determination.

13. Accessibility

(a) The public shall have access to the Park during the same prescribed hours as is the case with all other public parks operated by the City of Winnipeg and without fee unless agreed to otherwise by the City and the Foundation.

(b) To the extent reasonably possible, all aspects of the Park, including the Interpretive Centre, shall be designed so as to facilitate the physical accessibility by those of the public who require special accommodation and where possible in respect to any demonstration signs, same should be designed so as to be readily understood and accessible by those who have visual difficulties.

14. No Restriction

Nothing in this DMA shall be construed as a restriction on the City's rights to use the Park Site, with the exception of the Interpretive Centre and other like projects, for such public purposes as may be approved by

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Council, and so long as they do not breach the purpose and intent of this Agreement.

15. **Lease**

The City and the Foundation agree to enter into the Lease attached hereto as Exhibit "A" in respect of the lands in the Park on which the Interpretive Centre is to be located. The City and the Foundation shall enter into like leases in respect of those part(s) of the Park Site on which other like projects may be established, subject to prior approval of the Director of Public Works which approval will not be unreasonably withheld.

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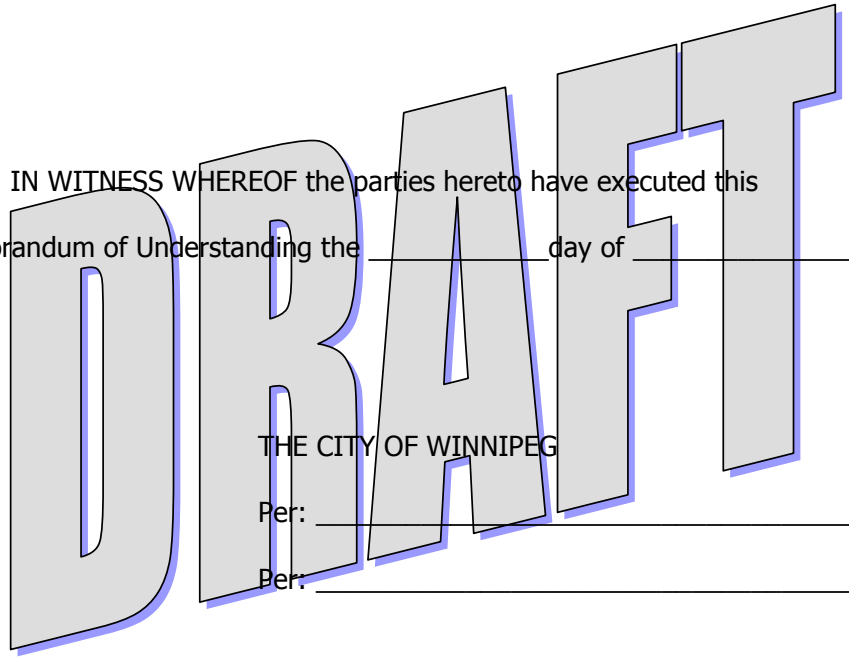
16. Amendment

This DMA may be amended by the mutual agreement of both parties, evidenced in writing.

17. Dispute Resolution

In the event of any disagreement between the representatives of the City and the Foundation in respect of matters arising in the Steering Committee, such disagreement may first be referred by either party to the

Director of Public Works for consideration, and if not resolved to the satisfaction of either party, then to the City's Chief Administrative Officer.



IN WITNESS WHEREOF the parties hereto have executed this Memorandum of Understanding the _____ day of _____, 2006

THE CITY OF WINNIPEG

Per: _____

Per: _____

THE HENTELEFF PARK FOUNDATION INC.

Per: _____

Per: _____

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SCHEDULE "A"

1. The City shall lease to the Lessee all that parcel of land shown illustrated and identified as "PROPOSED LEASE " on Misc. Plan No. attached hereto (herein called the "Land").

2. The Lessee shall have the use of the Land for a term of twenty-five (25) years (herein called the "Term") commencing on January 1, 2000 and ending on December 31, 20 or until otherwise terminated as herein provided.

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3. SUBJECT TO THE APPROVAL BY THE CITY, and provided that the Lessee is not in default under its obligations herein contained or in the Henteleff Park Development and Management Agreement, and provided this Lease Agreement shall not have terminated for any cause whatsoever, the Lessee shall have the right to renew this Lease Agreement for a further period of TWENTY-FIVE (25) YEARS as and from the expiration of the term (herein called the ***"Renewal Period"***) on the same terms and conditions excepting this Clause 3, and provided that the annual rent during the Renewal Period shall not be less than the annual rent required to be paid during the term.

4. The Lessee shall pay rent for the Term of the sum of ONE ($1.00) DOLLAR to the City, payable in advance on January 1, 200_, GST extra as applicable.

5. The Lessee further covenants and agrees with the City as follows:

   (a) In addition to the payment aforesaid, to pay all license fees, municipal tax, school tax and business tax which may be charged in respect of the use and occupation of the Land by the Lessee and any goods and services tax charged in respect of rent payable under the lease or in respect of the rental of space under the lease, whether such fees and taxes are charged by any municipal, provincial or federal authority or otherwise.

(b) To comply with all applicable statutes, by-laws, ordinances and regulations of any Federal, Provincial or Municipal authority pertaining to the use and occupancy of the Land by the Lessee, and it shall at its sole cost, effort and expense, obtain all necessary permits and shall comply promptly with all laws, by-laws, ordinances, rules, regulations, orders, requirements and recommendations of any and all federal, provincial, municipal and other governmental authorities or associations or insurance underwriters or agents which may be applicable to the Lessee or to the manner of use of the Land.

(c) To use the Land at the Lessee's sole cost and expense for the development and maintenance of The Henteleff Park Foundation Inc. Interpretive Centre (herein called the "Interpretive Centre") and other like structures as defined in the Framework Plan in strict accordance with the Henteleff Park Framework Plan, a copy of which is attached hereto, for purposes related to the Park and the Interpretive Centre and not to use or permit the Land or any part thereof to be used for any other purposes.

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(d) Not to erect or permit the erection of any buildings or structures on the Land without the prior written consent of the Director but such consent shall not be unreasonably withheld.

(e) Prior to commencement of any work in respect of sub-clause 1(c) above, to provide to the City's Director of Planning, Property and Development (herein called the "Director") for approval, a site plan which shall include all proposed landscaping plans and a description of the proposed work including tree replacement.

(f) To replace, at its sole cost, effort and expense, any trees that it may remove from the Land.

(g) To indemnify and keep indemnified the City from and against all claims, actions or proceedings for loss, injury, damages or compensation by any person, firm or corporation, whether to real or personal property wheresoever situated, or by any member, employee, agent, licensee, invitee, tenant or third party whether claiming through or under the Lessee or to the Lessee's use of the Land, or the construction, maintenance, existence or use of any buildings erected thereon, or in any way connected therewith or otherwise by reason of the exercise by the Lessee of the use hereby granted or the performance of or failure to perform its obligations hereunder.

(h) TO FURTHER SAFEGUARD THE CITY the Lessee shall purchase and keep in force during the full term of this Agreement, a Comprehensive General Liability Policy, including but not limited to the following provisions:

- The City of Winnipeg to be added as an additional insured;
- the policy to contain a Cross-Liability clause;
- minimum limits of $5,000,000.00, all inclusive.
- the policy to provide for Tenant's/Licensee's Legal Liability;

and the Lessee shall file with the City a Certificate of Insurance in a form satisfactory to the City Solicitor;

and the City shall have a right to alter the limits and coverages as required from time to time during the continuance of this Agreement;

and neither the Lessee nor the Insurer under any or all policy or policies so maintained, shall at any time during the currency of this Agreement, cancel, materially alter or cause any or all such policy or policies to lapse without a minimum of fifteen (15) days prior written notice being delivered to the City Solicitor.

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(h) Not to file any Caveat or other encumbrance against the Land.

(i) To maintain, at its own expense, the Land in a neat and tidy manner to the satisfaction of the Director.

(j) Not to assign this Lease Agreement nor sublet the Land without the prior written consent of the Director.

AND the Lessee hereby acknowledges and agrees that any consent by the City to an assignment or sub-let shall not relieve the Lessee of its obligations for the payment of rent and the performance of the terms and conditions contained in this Agreement.

(k) To assume all costs and expenses incurred by the City in repairing actual damage to the Land and/or utilities therein, which is caused by or arises out of the Lessee's use and occupancy of the said land.

(l) To pay all utilities and operating costs in connection with its use and occupancy of the Land.

(m) To be totally responsible for all security costs as required, in connection with its use and occupancy of the Land.

6. The Lessee hereby acknowledges and agrees that the City has made no representation, warranties or guarantees of any nature or kind whatsoever as to the quality, condition or suitability of the Land for any use or purpose, nor as to any environmental conditions which may exist.

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FURTHER, the Lessee hereby acknowledges and agrees, that prior to the commencement of this Lease Agreement, and upon not less than Forty-eight (48) hours notice given by the Lessee to the City, it may, at its sole cost, effort and expense, conduct or cause to be conducted an Environmental Site Assessment including but not limited to soil testing of the Land, and in that event the Lessee does hereby undertake to:

(a) maintain the Land in safe condition at all times during the conduct of any work done in pursuance of this Clause;

(b) restore the Land to the same condition as prior to its entering in or upon same in pursuance of this Clause;

(c) indemnify and save harmless the City from and against all damages and claims arising out of or in any way attributable to the conduct of any such Environmental Site Assessment; and

(d) provide copies of any such Environmental Site Assessment and/or Report concerning soil testing of the Land to the City for its own use, at no cost to the City.

AND FURTHER in the event it is determined as a result of said Environmental Site Assessment that contamination levels exceed Provincial Environmental Standards for the Lessee's intended use of the Land and documentation to that effect is produced to the City prior to the commencement of this Lease Agreement, the Lessee may at its sole discretion, terminate this Lease Agreement and all rights, interests, entitlements, obligations and liabilities on the parts of the respective parties hereto, shall be deemed null and void,

7. The Lessee hereby further acknowledges and agrees that:

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(a) it 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 Land or any part thereof, any noxious, noisome or offensive art, trade, business, occupation or calling and the Lessee shall not do, omit or suffer or permit to be done or omitted in, on or upon the said land of 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.

(b) it shall ensure that all environmental contaminants are received, handled, used, stored, treated, shipped and disposed of in the manner required from time to time by applicable laws, by-laws, regulations rules or requirements of all authorities having jurisdiction over the Land or the Lessee.

It is hereby further acknowledged and agreed by the Lessee that it shall not at any time release into the environment or deposit, discharge, place or dispose of at, on or near the Land any dangerous goods as that term is defined in The Dangerous Goods Handling and Transportation Act, R.S.M. 1987, c.D12, as amended, replaced or substituted from time to time.

(c) it shall ensure that access to and use of the Land is maintained and conducted in a careful manner in accordance with good industry standards and in compliance with the provisions of any applicable environmental, health and/or safety statutes, regulations, orders or

directives of any government or governmental agency having jurisdiction over such operations.

8. The parties agree each with the other as follows:

(a) The City shall retain its right to enter upon the Land at any time with or without equipment:

(i) to view the state of repair of the Land, and the Lessee shall repair according to notice in writing given by the City. If the Lessee fails to repair according to notice, the City may do such work at the sole cost and expense of the Lessee, or

(ii) for the purpose of maintaining or repairing its utilities in or near to the said land, together with the right to enter upon and make full use of the Land at any time with or without equipment, for the purpose of renewing, altering or repairing its facilities including the right to exclude all others for as long as may be necessary to carry out such work; or

(iii) for any other purposes

without being responsible for any damage occasioned thereby.

AND the Lessee hereby acknowledges and agrees that it shall assume all loss, injury and damage to the property of the Lessee arising out of the doing of any act or thing by the City under this sub-clause 6(a), except as may be due to negligence on the part of the City.

(b) In the event of the Lessee not complying with the terms and conditions contained in this Lease Agreement and such default continues for a period of three (3) days (or such longer period as may be reasonably necessary if such default cannot be remedied within three (3) days with reasonable diligence) after notice to remedy such default, this Lease Agreement is subject to immediate cancellation by the Director.

(d) If the term hereby granted shall be at any time seized or taken in execution or attachment by any creditor of the Lessee or its permitted assigns, or if the Lessee or its permitted assigns shall make

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any assignment for the benefit of creditors or become bankrupt or insolvent, shall take the benefit of any Act that may be in force for bankrupt or insolvent debtors, the current year's rental shall immediately become due and payable and the said term shall immediately become forfeited and void.

(e) Notwithstanding the forfeiture or termination of this agreement in any manner herein provided for, the Lessee shall be and remain liable to the City for all payments due and obligations and liabilities incurred hereunder up to the date of such forfeiture or termination and for the fulfilment of all obligations herein contained on the part of the Lessee to be observed and performed upon or after said forfeiture or termination.

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8. Any notice required to be given to any party shall be sufficiently given

IN THE CASE OF THE CITY, if personally served on the City, or, if forwarded by ordinary mail, postage prepaid, addressed to:

Attention: Director File No.

The City of Winnipeg
Planning, Property and Development Department
2nd Floor - 65 Garry Street
Winnipeg, Manitoba
R3C 4K4

or, to such other address as the City may from time to time advise by notice in writing;

IN THE CASE OF THE LESSEE, if personally served on the Lessee or, if the Lessee is a Corporation, then on any officer or executive of the Lessee or, if forwarded by ordinary mail, postage prepaid addressed to:

XXX
The Henteleff Park Foundation Inc.

or to such other address as the Lessee may from time to time advise by notice in writing;

AND any such notice, if forwarded by mail, whenever mailed, shall be deemed to be served on the fifth (5th) business day next following the date it is so mailed.

10. Upon termination or cancellation of this Lease Agreement in any such manner aforesaid, the Lessee shall at its own expense, remove all its property and other materials, including but not limited to the Interpretive Centre, from the said land and restore the Land to a condition satisfactory to the Director. Should the Lessee default in so doing, then in such event the City may remove the Lessee's property and other materials including the Interpretive Centre, at the sole risk and expense of the Lessee and the Lessee shall pay to the City the entire cost and expense which may be incurred by the City in carrying out any such work or removal and/or disposal, and for the restoration of the Land to its satisfaction.

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IN WITNESS WHEREOF the parties hereto have executed these presents on the day and year first above written.

THE CITY OF WINNIPEG

Per: _____
For DIRECTOR of Planning, Property & Development
I have authority to bind The City of Winnipeg

THE HENTELEFF PARK FOUNDATION INC.

Witness:_____
Name:_____
(please print)

Per: _____
Name:
Title:
(affix corporate seal)

Witness:_____
Name:_____

Per: _____
Name:

(please print) Title:

We have authority to bind The Henteleff Park Foundation Inc.

Approved: Approved as to form:

Director
Planning, Property and Development Dept.

for CITY SOLICITOR/MANAGER
of LEGAL SERVICES

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