Agenda - Executive Policy Committee - July 15, 2009

Moved by Councillor

That Rule 10(3) of The Procedure By-law No. 50/2007 be suspended in order that the following item, which was received less than 96 hours preceding the committee meeting, be considered by Committee.

Report - Standing Policy Committee on Property and Development - July 13, 2009

Item No. 3 Lease Agreement - Sun Valley Park - River East Transcona School Division
(Elmwood-East Kildonan Ward)
eFile FI-2.2(33)

STANDING COMMITTEE RECOMMENDATION:

On July 13, 2009, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submits the following to Council:

1. That a Lease Agreement in favour of the River East School Division to use a portion of City-owned land for the purpose of maintaining a play structure area, shown as "Play Structure Area" on Misc. Plan. No. 8337/1, be approved in accordance with the terms and conditions outlined in the report of the Winnipeg Public Service dated June 12, 2009; the Agreement to provide for such other terms and conditions as are deemed necessary by the Director of Planning, Property and Development, the Director of Water and Waste, and by the Acting City Solicitor/Manager of Legal Services to protect the City's interests.

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 - July 15, 2009

Report - Standing Policy Committee on Property and Development - July 13, 2009

DECISION MAKING HISTORY:

STANDING COMMITTEE RECOMMENDATION:

On July 13, 2009, the Standing Policy Committee on Property and Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

RE: Sun Valley Park - Proposed Lease Renewal Agreement between the City and the River East – Transcona School Division – Lord Selkirk/West Kildonan Community

CRITICAL PATH: Standing Policy Committee on Property and Development

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Klassen	D. Joshi	n/a	P Sheegl, Deputy CAO

In accordance with the Council Order of July 18, 1979, the Standing Policy Committee on Property and Development shall authorize the leasing or rental of City properties for which the Director of the Planning, Property and Development Department has no authority. In this regard, the Department has negotiated a proposed lease in favour of the River East – Transcona School Division for the use of the area identified as “Play Structure Area” on the attached Misc. Plan. 8337/1.

RECOMMENDATION

1. That Council approve a Lease Agreement in favour of the River East School Division to use a portion of City-owned land for the purpose of maintaining a play structure area, shown as “Play Structure Area” on Misc. Plan. No. 8337/1, in accordance with the terms and conditions outlined herein; the Agreement to provide for such other terms and conditions as are deemed necessary by the Director of Planning, Property and Development Department, the Director of Water and Waste Department, and by the City Solicitor/Manager of Legal Services to protect the City’s interests.

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

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there are no general, policy, regulatory, environmental, financial, or human resource implications to the lease of the subject lands.

The Planning, Property and Development Department is seeking the approval of the Standing Policy Committee on Property and Development of the terms and conditions of a proposed five-year lease with the River East – Transcona School Division, as negotiated.

As referenced on the attached Misc. Plan. 8337/1, the “Play Structure Area” is located at 95 Sun Valley Drive, in Sun Valley Park for the unrestricted public access and use of the play structures. The original Lease Agreement has expired and the Lessee has requested to enter into a new agreement.

HISTORY

The Committee on Finance and Administration at its April 23, 1991 meeting approved an Agreement between the City and the River East School Division No. 9 to permit a Play Structure on City property, Sun Valley Park.

The City and the School Division entered into an Agreement for the public use of the Play Structure. The School Division was responsible for the operation, maintenance, repair and all other costs associated with the Play Structure.

The Planning, Property and Development Department has negotiated the proposed terms and conditions for a Lease Agreement in favour of River East – Transcona School Division for the maintenance of the “Play Structure Area” in the Sun Valley Park.

The Corporate Finance Department (Risk Management Branch) reviewed the insurance requirements for this proposed occupancy and their comments have been incorporated into the proposed terms and conditions for a new lease.

This report seeks approval of the renewed Lease Agreement as negotiated.

FINANCIAL IMPACT

Financial Impact Statement **Date:** June 12, 2009

Project Name: **First Year of Program 2009**

Proposed Lease Renewal Agreement between the City and the River East – Transcona School Division

	2009	2010	2011	2012	2013
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	1	1	1	1	1
Net Cost/(Benefit)	$ (1)	$ (1)	$ (1)	$ (1)	$ (1)
Less: Existing Budget Amounts	(1)	(1)	(1)	(1)	(1)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Other than the nominal rent of $1/annum, there are no financial implications associated with the recommendations in this report.

"Original signed by"
Mike McGinn, CA
Manager of Finance

CONSULTATION

In preparing this Report there was consultation with:

Corporate Support Services Department, Legal Services Division

Public Works Department, Transportation Division

Public Works Department, Parks & Open Spaces Division

Water & Waste Department, Engineering Division

SUBMITTED BY

Department:	Planning, Property & Development
Division:	Real Estate
Prepared by:	P. Johannsson, Real Estate Officer
Date:	June 12, 2009
File No.	4917/A

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Proposed Terms and Conditions for Lease Agreement between the City of Winnipeg and River East – Transcona School Division

Landlord:	City of Winnipeg
Tenant:	River East – Transcona School Division
Lease Are:	Referred to on Misc. Plan. No. 8337/1 as “Play Structure Area” inside the area of the “Subject City Property”,
Use:	To maintain the publicly used creative play structures located in Sun Valley Park, (hereinafter referred to as the “Play Structure Areas”).
Term:	Commencing April 23, 2001 and terminating on April 30, 2014, with option to renew for a further five year term on the same terms and conditions.
Rent:	$1.00 per annum plus GST.
Realty Taxes:	Tenant is responsible for all, realty taxes, municipal taxes, school taxes, local improvements, license fees, business tax, etc. of which may be charged in respect of the use and occupation of the subject property. Taxes are currently exempt.
Cancellation:	This agreement is subject to cancellation by either party, for any reason by giving 90 days written notice. Upon termination or cancellation of the agreement the Tenant shall remove its property and any and all improvements at its sole cost on or before the effective termination date of the Agreement and shall restore the premises to a condition satisfactory to “the Director of Planning Property & Development (hereinafter referred to as the Director)”. Should the Tenant default in so doing the City may remove the Tenant’s property and restore the premises at the sole risk and expense of the Tenant.

Insurance:	Commercial General Liability insurance in the amount of at least two million dollars ($2,000,000) all inclusive, with the City of Winnipeg to be added as an additional insured; such liability policy to contain a cross liability clause and contractual liability; All “all risks” property insurance policy for the full replacement cost insuring all outdoor equipment and/or play structures. All property damage or loss policies written on behalf of the Tenant shall contain a waiver of subrogation right which the Tenant insures may have against the City and against those whom the City is, in law, responsible, whether any such damage is caused by the act, omission, or fault of the City or by those for whom the City, is, in law, responsible; And, loss, if any, shall be payable to the City of Winnipeg as their interest appears; And, deductibles shall be borne by the Tenant; And, the Tenant shall not cancel, materially change, or cause any such policy or policies to lapse without minimum fifteen (15) days prior written notice to the City of Winnipeg; And, the Tenant shall file with the City a certificate of insurance in a form satisfactory to the City Solicitor; And, the City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance of this agreement.
Tenant Responsibilities:	To allow the public use of the “Play Structure Areas”, and not to use or permit the “Play Structure Areas” or any part thereof to be used for any other purpose without the written permission of the Director. The City acknowledges that the Tenant is not under any obligation to actively monitor the site. Tenant agrees not to erect or permit the erection of any buildings or additional structures within the “Play Structure Area”, without the prior written approval from the Director of the Water & Waste Department and the Director of Planning Property & Development. The Tenant shall be responsible for the operation, maintenance, supervision, repair, provision of utilities and all costs associated with the play structure and base to the satisfaction of the Director.

In the event that one of, or all of the play structures are damaged, the Tenant shall use the insurance proceeds to repair the play structure. In the event that the Tenant elects not to restore the play structure, it shall use the insurance proceeds to remove the play structure and to restore the lands to their original condition, to the satisfaction of the Director.

If in the opinion of the Director, the play structure or structures becomes unsafe, the City reserves the right to remove the structures without compensation to the Tenant and this agreement shall immediately become null and void.

If during the duration of this Agreement and any subsequent renewal terms thereof, the play structure or structures should, from any cause or causes whatsoever, be in any matter interfered with, damaged, injured or destroyed, or should by any reason thereof any loss, costs, damages, or any manner of detriment or disadvantage be occasioned to or sustained or suffered by the Tenant, the Tenant shall not by reason thereof have any claim or demand against the City, its servants or agents, nor be entitled to any reimbursement, compensation nor indemnity, except therefore and saving damage, injury or destruction is caused by the City, its servants or agents.

The Tenant shall not have any claim or demand against the City for detriment, damage, injury of any nature whatsoever or howsoever caused to any persons or property, including the play structure and base, or to any structures, erections, equipment, supplies, articles, materials, effects or things at any time brought, placed, made or being in or on the play structure and base, excepting therefore and saving where such detriment, damage or injury is caused by the City.

No assignment without written consent, no sub-letting, no placement of signage or advertising and leasehold improvements without prior written approval from “the Director”.

To comply with all applicable statutes, by-laws, ordinances and regulations pertaining to the use and occupancy of the lands by the Tenant and shall obtain all necessary permits.

The City shall have the right of access to the “Leased Area” at any time (24 hours a day, seven days a week) by its employees or other persons acting with authorization, with or

without equipment to maintain, operate, repair, inspect or rehabilitate existing water mains, sewer lines and appurtenances located within the “Leased Area”.

To view the state of repair of the “Play Structure Area”, and the Tenant shall repair according to notice in writing given by the City. If the Tenant fails to repair according to the notice, the City may do such work at the sole cost and expense of the Tenant, or
For the purpose of maintaining or repairing its utilities in or near to the “Play Structure Area” 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

For any other purpose, without being responsible for any damage occasioned thereby.

And the Tenant hereby acknowledges and agrees that it shall assume all loss, injury and damage to the property of the Tenant arising out of the doing of any act or thing by the City under this sub-section, except due to negligence on the part of the City.

Tenant shall not file any caveat or other encumbrance against the demised premises.

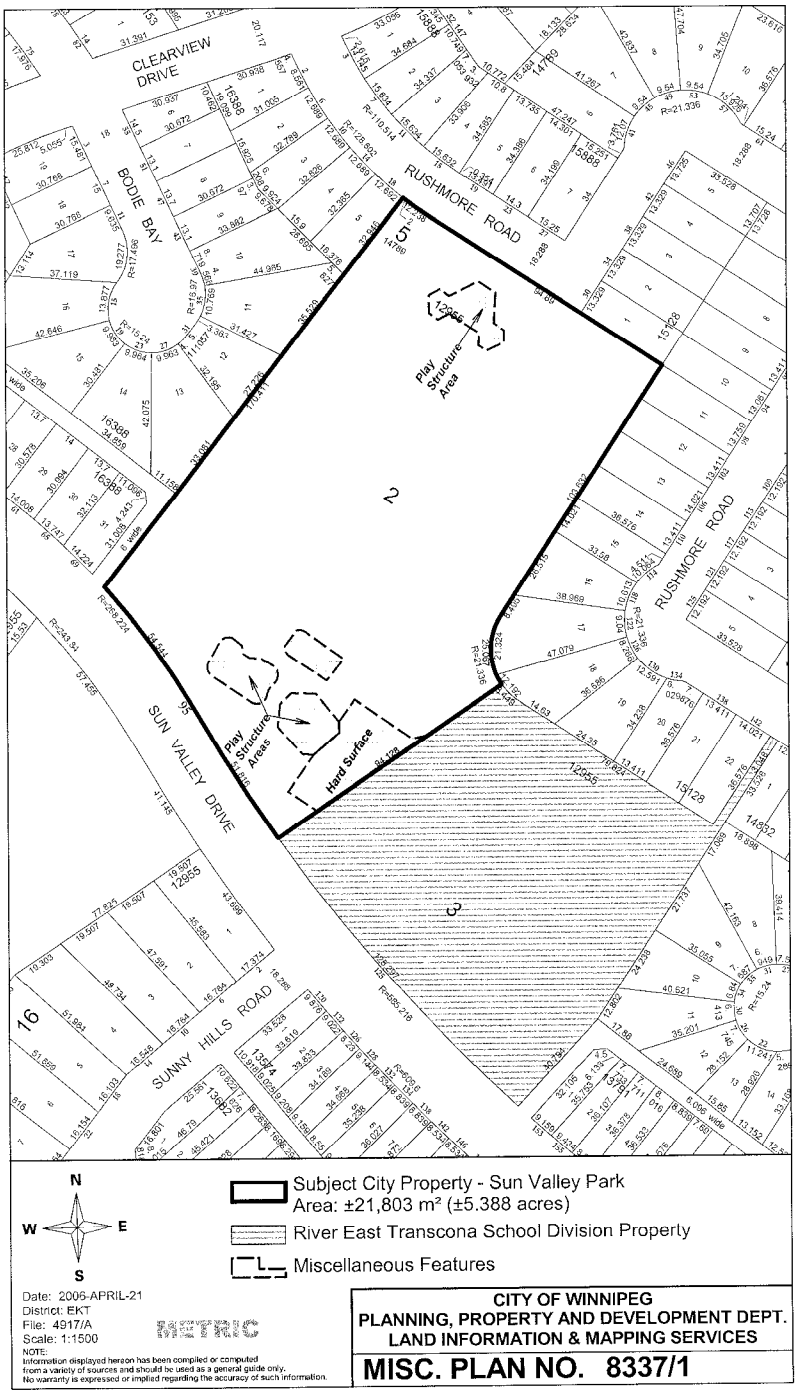
Any dispute arising from the interpretation, application or administration of this agreement or any subsequent renewal terms thereof shall be considered in the first instance by the City and the Tenant, which shall refer any matters which cannot be resolved under established policies of the parties to this Agreement to arbitration in accordance with the provisions of The Manitoba Arbitration Act.

Tenant shall enter into a formal agreement with the City embodying the foregoing terms and conditions and such other terms and conditions as the City Solicitor/Manager of Legal Services deems necessary and in form satisfactory to the City Solicitor/Manager of Legal Services.

_____
River East – Transcona School Division

Per: _____ _____
Name: Date
_____

Title:


CLEARVIEW DRIVE
BODIE BAY
RUSHMORE ROAD
RUSHMORE ROAD
SUN VALLEY DRIVE
SUNNY HILLS ROAD
Play Structure Area
Play Structure Area
Hard Surface
2
3
5
95
16
N
W
E
S
Subject City Property - Sun Valley Park
Area: ±21,803 m² (±5.388 acres)
River East Transcona School Division Properly
Miscellaneous Features
Date: 2006-APRIL-21
District: EKT
File: 4917/A
Scale: 1:1500
METRIC
NOTE:
Information displayed hereon has been compiled or computed from a variety of sources and should be used as a general guide only. No warranty is expressed or implied regarding the accuracy of such information.
CITY OF WINNIPEG
PLANNING, PROPERTY AND DEVELOPMENT DEPT.
LAND INFORMATION & MAPPING SERVICES
MISC. PLAN NO. 8337/1