Agenda - Council – July 20, 2011

Report - Standing Policy Committee on Property and Development – July 5, 2011

Item No. 12 Lease Agreement - Northwest corner of rue Messager and avenue Tache in Whittier Park – Alpine Club of Canada, St. Boniface Section (St. Boniface Ward)

STANDING COMMITTEE RECOMMENDATION:

On July 13, 2011, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submits the following to Council:

1. That the Lease Agreement for the area shown as 'Alpine Climbing Club of Canada, St. Boniface Section Lease Area' on Misc. Plan No. 12985 in favour of the Alpine Climbing Club of Canada, St. Boniface Section for the operation of an existing Ice Climbing Tower, be approved in accordance with the terms and conditions outlined in Schedule A.

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.

Report - Standing Policy Committee on Property and Development – July 5, 2011

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 13, 2011, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On July 5, 2011, 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

Title: **Proposed Lease Agreement for a portion of land at the North West corner of Rue Messager and Tache Avenue in Whittier Park – Alpine Club of Canada, St. Boniface Section**

Critical Path: **Standing Policy Committee on Property and Development, Executive Policy Committee, Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Thorgrimson	D. Joshi	n/a	Alex Robinson Deputy CAO

RECOMMENDATIONS

1. That the proposed Lease Agreement for the area shown as 'Alpine Climbing Club of Canada, St. Boniface Section Lease Area' on the attached Misc. Plan No. 12985 in favour of the Alpine Climbing Club of Canada, St. Boniface Section for the operation of an existing Ice Climbing Tower, be approved in accordance with the proposed terms and conditions outlined in the attached Schedule A.

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

REASON FOR THE REPORT

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 Planning, Property and Development has no authority.

IMPLICATIONS OF THE RECOMMENDATIONS

- The Department has determined that there is no general policy, regulatory, environmental, human resource or financial implications to the lease of this land as outlined in the attached Schedule "A".

HISTORY

At its meeting on April 6, 1995 the Standing Policy Committee on Protection, Parks and Culture approved a proposal by the Alpine Climbing Club of Canada, St. Boniface Section to establish and operate an Ice Climbing Tower in Whittier Park. .

During the period from 1995 and the present the Alpine Climbing Club of Canada, St. Boniface Section constructed the Climbing Tower, maintained the structure and provided programming at its sole expense.

The Climbing Tower is approximately 60' tall consisting of three 70 ft. long wood poles embedded in the ground in a triangular position with diagonal and horizontal bracing. It is enclosed by a chain link fence around the perimeter of the site. There is a temporary storage trailer to support onsite activities. During the winter season, ice is formed on the exterior of the structure to create alpine climbing conditions for local amateur ice climbers.

At its meeting held on April 27, 2005, Council approved By-law 89-2005 for the subject property which provides an exemption from municipal realty taxes for the subject occupancy.

By letter dated June 6, 2007, Mr. D. Cormie, P.Eng., provided a structural evaluation of the Climbing Tower and determined under seal that it is in excellent condition and no areas of deficiency were observed.

The Agreement between the City of Winnipeg and the Alpine Climbing Club expired December 31, 2010. The Club informed the City of their desire to initiate a new lease agreement. The Planning, Property and Development Department, Real Estate Division prepared new Terms and Conditions for the Agreement as per this request.

FINANCIAL IMPACT

Financial Impact Statement **Date:** June 21, 2011

Project Name: **First Year of Program** **2011**

Proposed Lease in Favour of the Alpine Climbing Club of Canada, St. Boniface Section to operated an existing Ice Climbing Tower in Whittier Park

	2011	2012	2013	2014	2015
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	501	501	501	501	501
Net Cost/(Benefit)	$ (501)	$ (501)	$ (501)	$ (501)	$ (501)
Less: Existing Budget Amounts	(501)	(501)	(501)	(501)	(501)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Annual revenues consist of rent of $1 + a $500 administration fee.

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

CONSULTATION

In preparing this report there was consultation with:

Legal Services
Corporate Finance
Public Works

SUBMITTED BY

Department	Planning, Property and Development
Division	Real Estate
Prepared by:	Stacy Sinclair
Date:	June 22, 2011
File No.	5413/A2 V2

Schedule "A"

Proposed Terms and Conditions for a Lease Agreement between the City of Winnipeg and the Alpine Club of Canada, St. Boniface Section

(Shown as "Lease Area" on attached Misc. Plan 12985)

Landlord:	City of Winnipeg
Licensee:	Alpine Club of Canada, St. Boniface Section
Licensed Lands:	A portion of City land located at the corner of Tache Avenue and Rue Messager, shown on the attached Misc. Plan 12985 as "Lease Area".
Use:	To operate an Alpine Ice Climbing Tower.
Term:	Five (5) years commencing September 1, 2010.
Renewal:	One five (5) year option to renew, subject to the same terms and conditions, except for this renewal option, subject to a rental increase, to be based on market rates at the time the Licensee exercises its option to renew, which at no time shall be less than the previous rental rate. Licensee to notify Landlord of intent to renew, not less than six (6) months prior to expiry of term.
Rent:	$1.00 plus GST per annum.
Admin Fee:	An annual administration fee of $500.00 plus GST, to be paid no later than December 1 of each year in the term or renewal period, starting in 2011.
Taxes:	Licensee responsible for all taxes, assessments, license fees of any kind which may be charged in respect of the use and occupation of the Licensed Lands.
Cancellation:	Upon ninety (90) days written notice by either party.
Insurance:	To indemnify and keep indemnified the City from and against all claims for damages which arise out of the use of the Licensed Lands by the Licensee. To further safeguard the City, the Licensee shall purchase and keep in force, during the full term of the agreement, a Commercial general liability insurance including but not limited to: Protection for claims of bodily injury and property damage, personal and advertising injury liability and product and completed operations liability in the inclusive amount of at least five million dollars ($5,000,000.00) per occurrence with a minimum $5,000,000 general aggregate; The City of Winnipeg shall be covered as an additional insured; Such liability policy must also contain a cross-liability or severability of interest clause, contractual liability, employees as additional insureds, tenant's legal liability for a limit commensurate with the space occupied, and shall not contain any special limitations on the scope of coverage afforded the City, its officers, officials, employees, agents or volunteers; A broad form property insurance policy for the full replacement cost insuring contents, mobile equipment and tenant's improvements; (including the Climbing Tower) If required, Automobile liability insurance for owned and non-owned

automobiles used for or in connection with the Lease in the amount of at least two million dollars ($2,000,000.00) to remain in place at all times during the full term of the Lease Agreement; such insurance may be met through the commercial general liability cover where applicable;

All property policies written on behalf of the Lessee shall contain a waiver of any subrogation right which the Tenant's insurers may have against the City and against those for 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;

All policies shall be taken out with insurers licensed to and carrying on business in the Province of Manitoba;

Deductibles shall be borne by the Lessee;

The Lessee shall not cancel, or cause any such policy or policies to lapse without a minimum thirty (30) days prior written notice to the City;

The Lessee shall provide written notice to the City of Winnipeg of any material changes to their policies within thirty (30) days of the change taking effect;

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

The City shall have the right to alter the limits and/or coverages as reasonably required from time to time during the continuance to this Lease Agreement and for any subsequent renewals thereof, provided that the City shall give the Lessee reasonable notice and shall request reasonable change.

Conditions: The Licensee will not construct or permit the construction of any building or structure whatsoever on the Licensed Lands, nor make any excavation therein or improvement thereon, without the written authority of the City's Director of Planning, Property and Development.

The development and maintenance of the Licensed Lands will be performed at the sole cost, expense and effort of the Licensee, including, but not limited to, obtaining all permits required to develop, occupy and utilize the Licensed Lands for the intended use.

The Licensee shall operate the Climbing Tower seasonally within each year of the term or renewal period of this agreement.

The Licensee shall maintain the Climbing Tower and undertake all required repairs.

Have a qualified engineer complete a structural inspection of the Climbing Tower every three years beginning in 2011 and to submit same to the Director of Public Works and to complete any required repairs or upgrades to the structure at its sole cost and expense within thirty (30) days of written notice provided by the City.

The Licensee shall comply with all applicable statutes, by-laws, ordinances and regulations of any federal, provincial or municipal authority pertaining to the use and operation of the Climbing Tower.

The Licensee will maintain at its own expense the Licensed Lands in a

safe, clean and tidy condition to the satisfaction of the City.

In the event that the Licensed Lands require repair, the Licensee shall perform at its sole cost, expense and effort required repairs within thirty (30) days of written notice provided by the City.

The Licensee shall maintain the equipment used in conjunction with and ancillary to the operation of the Climbing Tower in a manner which will afford the maximum degree of safety in the operation of same to the satisfaction of the Director of Public Works and in that regard, it is understood by the parties hereto that the employees, agents and servants of the City shall, at all times during this agreement, have a right of access to enter upon and inspect the Climbing Tower upon providing reasonable notice to the Licensee and the Licensee shall comply immediately with any requirement of the Director of Public Works with respect to maintenance and servicing. It is hereby understood that the City, its employees, agents, or servants shall in no way be responsible or liable for any damage occasioned thereby.

The Licensee will pay all operating costs including hydro costs related to the use and occupancy of the Licensed Lands.

The Licensee takes the Licensed Lands on an "as is" basis and 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 Licensed Lands for any use or purpose, nor as to any environmental conditions which may exist.

The Licensee shall at its sole cost and expense 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 demised premises or the Licensee; and

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.

The City reserves the right for MTS Communications Inc. and Manitoba Hydro-Electric Board or other public utilities (hereinafter referred to as "Public Utilities") to enter upon the Licensed Lands for maintenance and/or repair of their utilities without the City and/or the Public Utilities being responsible for any damage occasioned thereby.

The Licensee is not to assign or sub-let or part with possession of all or any part of the Licensed Lands without the Licensee first obtaining the prior written consent of the City. In such event, the City in its sole discretion may cancel this agreement and enter into a new agreement. Further the Licensee acknowledges and agrees that upon making an application for such consent by the City, the Licensee shall pay to the City a non-refundable administrative fee of two hundred and fifty dollars ($250.00) plus GST, or such amount as may from time to time be determined by the City in its sole discretion and acting reasonably.

In the event of the Licensee being in default of any Terms and Conditions contained herein, the License Agreement is subject to

immediate cancellation by the City.

Upon termination or cancellation of the License Agreement the Licensee shall remove its property and improvements from the Licensed Lands and leave same in a condition satisfactory to the City. Should the Licensee default in so doing the City may remove the Licensee's property and improvements and restore the Licensed Lands at the sole risk and expense of the Licensee.

It is agreed between the parties that the City will maintain the riverbank adjacent to the Climbing Tower.

This proposal is subject to final approval by the City of Winnipeg's Council, or its delegated authority.

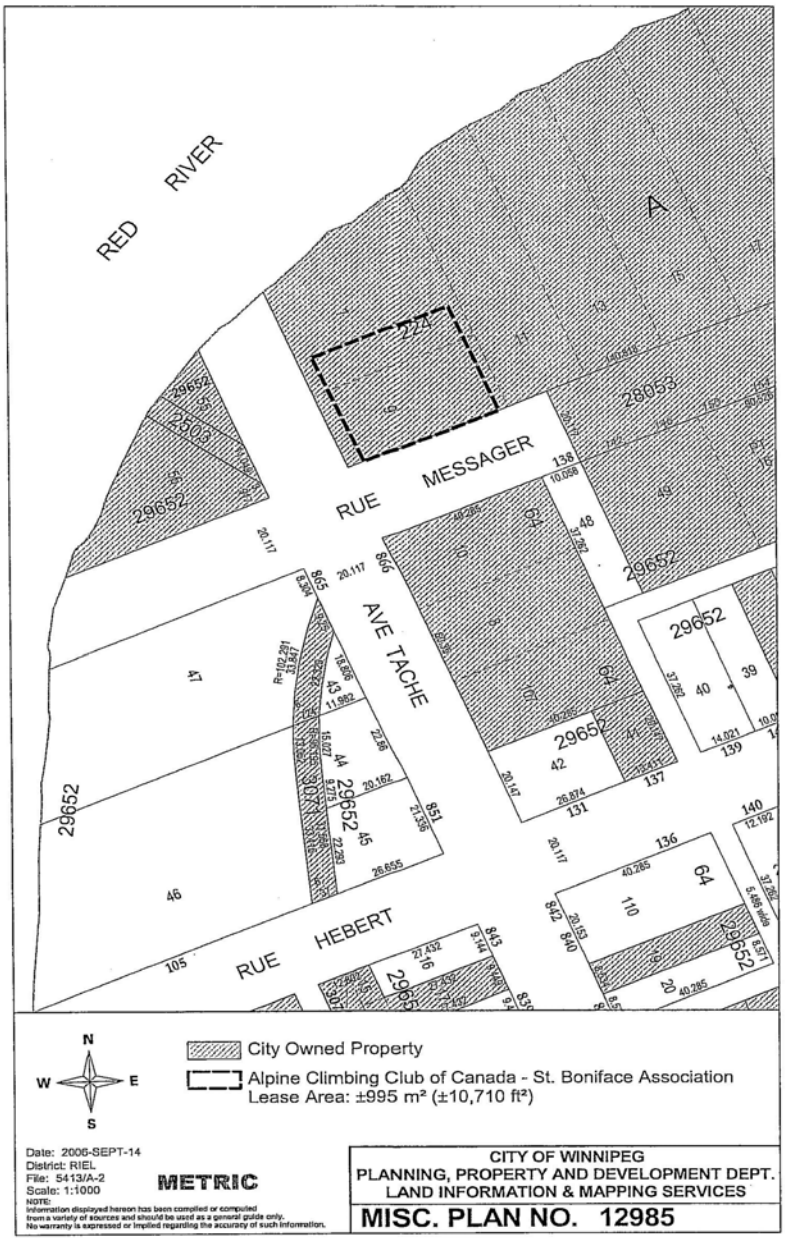
The Licensee shall enter into a formal agreement with the City embodying the foregoing Terms and Conditions and such other Terms and Conditions as the City Solicitor/Manager of Legal Services deems necessary and in a form satisfactory to the City Solicitor/Manager of Legal Services.

Alpine Club of Canada, St. Boniface Section, hereby acknowledges and agrees to enter into a Lease Agreement with the City of Winnipeg for the use of the area identified as "Lease Area" on Misc. Plan 12985 attached in accordance with the Terms and Conditions as outlined herein on this Schedule "A".

Alpine Club of Canada,
St. Boniface Section

May 31, 2011
Date

Schedule "A"


RED RIVER
A
RUE MESSAGER
AVE TACHE
RUE HEBERT
City Owned Property
Alpine Climbing Club of Canada - St. Boniface Association
Lease Area: ±995 m² (±10,710 ft²)
N
W
E
S
Date: 2006-SEPT-14
District: RIEL
File: 5413/A-2
Scale: 1:1000
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. 12985