Minutes - Executive Policy Committee - March 5, 2008

REPORTS

Minute No. 181 **Red Tape Commission, Recommendation 17 - Create a "Community Management Lease" Model**
File GG-5

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee referred the report dated January 16, 2008 back to the Winnipeg Public Service.

DECISION MAKING HISTORY:

Moved by Councillor Wyatt,

That the report dated January 16, 2008 be referred back to the Winnipeg Public Service.

Carried

RE: Red Tape Commission Report: Recommendation #17– Create a "Community Management Lease" model for alternate service delivery, reducing red tape that prevents volunteer groups from adding value to the City of Winnipeg's properties and assets

FOR SUBMISSION TO: Executive Policy Committee

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

REPORT DATE: January 16, 2008

RECOMMENDATION:

That the continued use of the piloted administrative tools and agreements be approved in order to assist community organizations to enhance City of Winnipeg assets, subject to such further refinements and improvements as the Chief Administrative Officer may approve.

Report Summary

Key Issues:

- As directed by EPC, the Public Service has tested and refined several administrative tools for facilitating enhancement of City of Winnipeg assets by community groups, including:

  a) Memorandum of Understanding/ Project Agreement (Asset Improvement)
  b) Service/ Maintenance Agreement (Enhanced Level of Service)
  c) Lease Agreement (Exclusive Group Use & Programming)

- These administrative tools have been utilized on projects over the 2007 construction season to make it easier for those groups with the interest and capacity to improve, maintain and /or program City of Winnipeg assets.

- At the conclusion of the 2007 construction season, several community groups were contacted to solicit their feedback on how various agreements impacted their ability to improve City assets.

- Insurance and liability issues are key challenges facing both community groups and City project staff, when working together to improve City assets.

- The Public Service will continue to utilize and improve these administrative tools to assist community organizations to improve City of Winnipeg assets, while ensuring that public interests of safety, liability and long-term sustainability are protected.

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 recommendation represents an ongoing commitment to public participation in improving City of Winnipeg assets

Policy Implications

(X) No

( ) Yes

Comment(s): The approval of the recommended administrative tools and agreements does not have policy implications.

Regulatory Implications

( ) None

(X) Eliminates or reduces regulatory impact

( ) Proposes regulatory impact

Comment(s): The piloted tools and agreements will reduce red tape for organizations looking to improve City assets.

Environmental Implications

(X) No

( ) Yes

Comment(s):

Human Resources Implications

( ) No

(X) Yes

Comment(s): Staff resources are needed to draft agreements and to provide ongoing project management support to community groups improving City of Winnipeg assets.

Financial Implications

(X) Within approved current and/or capital budget

( ) Current and/or capital budget adjustment required

Comment(s): There are no financial implications associated with the recommendations in this report.

Report

REASON FOR THE REPORT:

On June 13, 2007, the Executive Policy Committee concurred in the administrative recommendation regarding the development of administrative tools to assist community organizations to improve City assets and directed:

- That the Administration evaluate and refine the piloted tools and agreements over the 2007 construction season and report back to Executive Policy Committee in the Fall of 2007.

HISTORY:

On November 23, 2004, the Mayor officially established the Red Tape Commission to review City operations and regulations in order to improve customer service while granting administrators more freedom to be innovative.

The Red Tape Commission submitted a final report dated June 28, 2005, containing 30 recommendations.

Recommendation #17 of the Red Tape Commission Report states: "*Create a 'Community Management Lease' model for alternate service delivery, reducing red tape that prevents volunteer groups from adding value to the City of Winnipeg's properties and assets*".

On June 13, 2007, the Executive Policy Committee concurred in the administrative recommendation, namely:

1. That the Administration proceeds immediately to implement and test three administrative tools for facilitating the enhancement of City of Winnipeg assets by community groups, including:

A. Memorandum of Understanding/ Project Agreement (Asset Improvement)
B. Service/ Maintenance Agreement (Enhanced Service)
C. Lease Agreement (Exclusive Group Use & Programming)

2. That the Administration evaluate and refine the piloted tools and agreements over the 2007 construction season and report back to Executive Policy Committee in the Fall of 2007.

3. That the Administration develop a brochure and interactive web page to assist community organizations looking to improve City of Winnipeg assets for launch in 2008.

DISCUSSION:

Background
Over the past 20 years, volunteer community organizations have been highly effective in improving City assets through leveraging City of Winnipeg investment (Capital, Community Incentive Grant Program, Land Dedication Reserve Fund) into additional funding from other levels of government, funding agencies and private donors.

Each year, dozens of community-initiated improvement projects take place on City of Winnipeg properties, including playground, trail and athletic field developments, community centre enhancements and neighbourhood streetscape improvements.

Numerous community groups have demonstrated the interest and capacity to fill the gap between a base level of municipal services provided by the City and a higher "community standard".

The Public Service has been utilizing and improving several administrative tools to assist community organizations to improve City of Winnipeg assets. A summary of these administrative tools is provided in 'Table A'.

Piloted Tools and Agreements- 2007 Construction Season
The following are examples of administrative tools and agreements recently used to allow community organizations to improve City assets. At the conclusion of the 2007 construction season (mid-November), the Public Service conducted a post-construction project evaluation that included interviews with several community groups to obtain their feedback and assessment of the agreements and their impact on project delivery.

A. Memorandum of Understanding/ Project Agreements
i) Wildwood Park Community Centre Playground Redevelopment:

Utilizing a Memorandum of Understanding and Project Funding Agreement, the community group, with support from City staff, managed the purchase and installation of a new $92,000 play space redevelopment and leveraged an additional $10,000 commitment from the Province of Manitoba.

ii) Lindenwoods Spray Pad:
Utilizing a Memorandum of Understanding and Project Funding Agreement the community group, with support from City staff, managed the construction of a $290,000 spray pad development, including over $90,000 in community fundraising.

iii) West End BIZ:
Utilizing a Project Funding Agreement, the West End BIZ, with support from City staff, managed the design, fabrication and installation of $66,000 in community kiosks and streetscaping enhancements, funded through the Building Communities Initiative.

Opportunities:

- Enables grassroots implementation of community improvement projects.
- Allows for direct negotiation of price, schedule and product with contractors and suppliers, not possible under City procurement policy.
- Allows groups to leverage City investment into additional funding from private donations and other levels of government.
- Promotes community partnership and empowers volunteers to improve their community.

Challenges:

- Typically requires significant time commitment from volunteer or service organizations to manage and implement projects.
- Groups perceive an increase in risk (financial, legal) in leading the implementation of projects on City lands.
- Conditions in some legal agreements are viewed to place most of the project risk on community volunteers. Such conditions can have a negative effect on the working relationship between the community group and City project staff.
- Many groups want control of projects, but no liability or insurance requirements.
- In some cases, MOU's are required to clarify and define the relationship between the City and volunteer groups.
- Requires involvement of one or more community volunteers with a background in project management or construction management.

B. Service Agreements

i) Provencher BIZ Streetscaping:
A Service Agreement was utilized as part of the Provencher Streetscaping Project to clearly define maintenance responsibilities of various Civic departments as well as those accepted by the Provencher BIZ and their summer Green Team staff.

ii) Various Adopt-A-Park Agreements:
There are currently 50 Adopt-A-Park agreements through the Public Works Department (Parks and Open Space Division) enabling community residents/organizations to maintain and improve neighbourhood parks to a higher level 'community standard'. Examples of efforts include litter pickup, weeding of flower or shrub beds, raking protective surface under play structures and perennial plantings.

Opportunities-

- Clearly articulates responsibilities for various maintenance items.
- Facilitates maintenance and improvement of parks and streetscape areas to a higher 'community standard'.
- Promotes community involvement and empowers groups to make positive change in their neighbourhoods.

Challenges-

- Some groups feel the higher 'community standard" is one that City should be implementing in the first place.
- Typically requires significant time commitment from volunteers or community organizations to assist with asset maintenance.
- In some cases, enhanced maintenance by community organizations may not be sustainable over the long term, as is often dependent on funding from other levels of government (e.g. Green Team) or from the involvement of a few key community volunteers.

C. Lease Agreements

i) Kinsmen Allard Arena:
Lease Agreement with the St James Minor Hockey Association to operate the Arena and to undertake capital repairs. The Public Service completed a review of the Kinsmen-Allard Arena operation and determined that the alternative model for operating the arena has been successful in achieving the goals of increased local management autonomy, cost effectiveness and sourcing of external capital for the repair and maintenance of an indoor arena.

ii) East Winnipeg Sports Association - Buhler Park
The City entered into a Lease and Project Agreement to develop a 139-acre sports facility located in Transcona. The project provides a basis for developing a regional sports site to serve the community of Transcona utilizing external funding, which creates an opportunity for the City to rationalize a portion of the athletic fields located in Transcona. The East Winnipeg Sports Association Inc. has raised in excess of $1.2 million in private donations, as well as Municipal Rural Infrastructure Program funding of $3.0 million towards an overall $6.0 million project.

Opportunities:

- Enables facility development, community operation of facilities and delivery of programs to meet identified community needs.
- Allows groups to leverage City investment into additional funding from other levels of government and private donations.
- Promotes community partnership and “ownership” and empowers volunteers to control the City asset and improve their community.

Challenges:

- Development of a sustainable Business Plan requires long-term funding, operation and maintenance strategies by the community group.
- Typically requires significant time commitment from volunteer or service organizations to implement projects and manage facilities or programs.
- Groups perceive an increase in risk (financial, legal) in leading the improvement and management of City assets.
- Conditions in some legal agreements are viewed to place most of the project risk on community volunteers. This can have a negative effect on the working relationship between the community group and City project staff.
- Many groups want control of projects, but no liability or insurance requirements.
- Some insurance requirements have significant financial implications on volunteer community organizations.
- Many groups would like to see the City provide more support in ongoing maintenance of facilities and sites.

TABLE A: Piloted Tools and Agreements

	A.1 Memorandum of Understanding (Asset Improvement)	A.2 Project Agreement (Asset Improvement)	B. Service/ Maintenance Agreement (Enhanced Service)	C. Lease Agreement (Exclusive Group Use & Programming)
Description	Provides clarification of roles and responsibilities for project delivery, typically when groups are providing project funding.	Legal agreement for flow of City Capital to community groups for their administration and project management.	Simple agreement for provision of enhance level of service by a community organization	Agreement for lease of City land/facility providing community groups exclusive use, programming rights and maintenance terms, in accordance with an approved Business Plan.
Typical length of agreement	1-2 pages	10-12 pages	1-2 pages	10-30 pages
Project Examples	Playgrounds Trails Tree planting Splash pads Riffle Installation	Playgrounds Trails Tree planting Splash Pads Athletic field development Riffle Installation	BIZ Streetscaping Graffiti Removal Athletic Field Maintenance Adopt-A-Park Adopt-A-Rink	Recreation facility management: - athletic fields - sport facilities - arenas e.g. Maple Grove Park/ Buhler Park
Scope of Agreement	Roles & Responsibilities Insurance requirements Approval process Inspections/Acceptance	Roles & Responsibilities Insurance requirements Approval process Inspections/Acceptance Flow of Funds	Contacts Roles & Responsibilities Length of commitment	Responsibilities Financial terms/rent Ownership of Improvements Insurance requirements Maintenance/operation Community access and use Contingency fund Financial reporting
Approval Body	Applicable Division Manager	Applicable Director	Applicable Division Manager/ Director or SPC on PW when additional resources required.	City Council or Committees of Council.

Conclusions:

The piloted agreements as defined above are useful tools to clarify roles, reduce red tape and allow community groups to have direct involvement in projects that improve City assets.

Depending on project scope, funding, and complexity, the Public Service will endeavor to utilize the appropriate agreement tool to assist community organizations improve City assets, while ensuring that public interests of safety, liability and long-term sustainability are protected.

It should be noted that many groups want control of projects, but no liability or insurance requirements. If improvements are to be made to City lands or facilities, the City of Winnipeg generally assumes the ownership, maintenance and all liabilities associated

with the installations, provided that the completed project meets approved standards, guidelines and the City's base level of service. In most instances, insurance requirements during construction are carried by any hired consultants and contractors.

However, if groups are looking to have exclusive rights to operate, maintain and program a City asset, then additional insurance coverage is typically required.

Next Steps:

- The Public Service will continue to utilize and improve various administrative tools and agreements to assist Community organizations improve City assets.

- To assist groups in making improvements to Civic assets, a brochure and interactive website will be developed to provide contact information, project checklists, approval processes and other project resources allowing and empowering groups in seeking partnership funding for endorsed projects.

Financial Impact Statement Date: January 14, 2008

Project Name:

Red Tape Commission Recommendation #17– Create a "Community Management Lease" model for alternate service delivery

COMMENTS:

There are no direct financial implications associated with the recommendations in this report.

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

IN PREPARING THIS REPORT THERE WAS:

Internal Consultation With and Concurrence By:

Public Works Department
Legal Services Division

External Consultation With:
Wildwood Park Playground Committee
Lindenwoods Community Centre- Splash Pad Project
East West Sports Association- 40 acre Sports Park
Save Our Seine River Environment Inc.

THIS REPORT SUBMITTED BY:

Department: Planning, Property and Development
Division: Planning and Land Use



Red Tape 17
pdate- Attachment.

Attachments:

0:\Reports Directive\Planning and Land Use\Parks, Riverbanks and Community Initiatives\Ken McKim\Red Tape 17 Update Report.doc

Parks and Open Space Division
Adopt-A-Park Information sheet
(2007)



Initial Contact: Date of Call: _____

Name of Organization: _____

Name of Contact Person: _____ Title: _____

Mailing Address: _____

Phone Number: (home)_____ (work) _____

Fax #: _____ E-Mail: _____

Park(s) and/or other locations discussed: _____

_____

Age of participants: Senior ☐ Adult ☐ Youth ☐ Children (5-12) ☐ Preschool (2-5) ☐

Number of participants: _____

Do any participants have a disability or special needs? No ☐ Yes ☐

If yes, please specify: _____

Activities discussed *(preliminary discussions with volunteer):* _____

_____

Equipment requested: _____

_____

Length of commitment: _____

Presentation requested by group: Yes ☐ No: ☐

Resource material and additional information forwarded to volunteer: _____

_____

Follow-up required? _____

_____

Final Arrangements

Responsibilities of the volunteer:

Remove weeds from shrub bed	☐	Litter pickup	☐
Raking sand under play structure	☐	Flowerbed maintenance	☐
Pleasure rink shoveling	☐		

Other: _____

_____

Responsibilities of Park Services:

☐ Cut grass and pick up litter on a two-week cycle as a part of our regular maintenance program
☐ Supply equipment where possible
☐ Respond to hazardous conditions *(Note: If you notice any safety concerns i.e.: dead animals, needles, syringes please do not touch. For damaged playground equipment contact the Customer Service at 986-7623 or the technical assistant at _____ from 8:30 am to 4:00 pm Monday to Friday)*
☐ Will remove filled garbage bags at the end of the event

Other: _____

Certificate required: No ☐ Yes ☐ Date issued: _____

Additional Information:

Adopt-A-Park sign required:	No ☐	Yes ☐	Date installed: _____
News release required:	No ☐	Yes ☐	
Equipment loan sheet attached:	No ☐	Yes ☐	

Letter of Intent approved by Superintendent? Yes ☐ N/A ☐ Date received: _____

Date or time line for agreed upon activity: _____

MEMORANDUM OF UNDERSTANDING

BETWEEN:

and

THE CITY OF WINNIPEG

FOR: **THE CONSTRUCTION OF *Project description***
AT THE *name of site/park/community centre, Address*

The following procedures will govern the activities of *organization name* and The City of Winnipeg in their understanding towards the construction of *project description* at the *name of site/park/community centre,* at *address.*

The procedures will be in effect for the 2007 and 2008 construction seasons.

1.0 BASIC PRECEPTS

1.01 Legal Jurisdiction of The City Owned Property

The Property will remain under the legal jurisdiction of the City of Winnipeg. By executing this memorandum of understanding, the City is providing the *organization name* and their designated contractor with access to City-owned lands at *address*.

2.0 ROLES OF THE RESPECTIVE PARTNERS

2.01 Role of *organization name* and their Contractor

The *organization name* will undertake the construction of *project description* in the following manner:

- Layout area of proposed construction and obtain all necessary underground clearances, permits and approvals.
- Cover all costs associated with the project including any required permit fees, construction costs and site restoration costs.
- Repair any damage to City-owned lands incurred during the construction process.
- Give notice to City of Winnipeg staff 48 hours prior to commencement of construction and arrange for inspection at project completion.
- Shall promptly and at its sole cost, effort and expense obtain and register discharges of any Builders' Liens that are registered as a result of the project.

2.02 Role of the City of Winnipeg

The City of Winnipeg will assist this project, in the following manner;

- Inspection and monitoring of the limestone pathway construction in conjunction with *organization name*; and
- Assume maintenance of the *project description* only once the final construction has been inspected and accepted by City of Winnipeg staff.

3.0 LOCATION OF ACTIVITIES

All activities will be undertaken *name of site/park/community centre*, **at** *address,* in accordance with the attached plan.

Site access shall be obtained from….

4.0 IMPLEMENTATION OF PROJECT

4.01 Project Construction & Specifications

The City of Winnipeg Standard Construction Specifications in its entirety, shall apply to the Work.

The City of Winnipeg Standard Construction Specifications is available on the Information Connection page at The City of Winnipeg, Corporate Finance, Materials Management Branch internet site at http://www.winnipeg.ca/matmgt.

All construction to be in accordance with the attached plans.

5.0 INSURANCE REQUIREMENTS

The Contractor shall provide and maintain the following insurance coverage:

(a) commercial general liability insurance, in the amount of at least two million dollars ($2,000,000.00) inclusive, with The City of Winnipeg added as an additional insured, with a cross-liability clause, such liability policy to also contain a contractual liability, unlicensed motor vehicle liability, non-owned automobile liability and products and completed operations, to remain in place at all times during the performance of the Work and throughout the warranty period;

(b) automobile liability insurance for owned automobiles used for or in connection with the Work in the amount of at least two million dollars ($2,000,000.00) at all times during the performance of the Work and until the date of Total Performance;

Deductibles shall be borne by the Contractor.

_____
Manager of Parks and Open Space

Dated this _____ day of _____ 2007

Acknowledged and Approved this _____ day of _____ 2007.

Organization name

_____

THIS AGREEMENT made in duplicate as of the day of , 2007.

BETWEEN:

THE CITY OF WINNIPEG,

(hereinafter called the "City"),

OF THE FIRST PART,

- and -

Group Name,

(hereinafter called the "Recipient"),

OF THE SECOND PART.

WHEREAS The City has made funds available through its Capital Budget for the programs identified therein;

AND WHEREAS the Recipient applied for funds to undertake the **Project name** and related works, a ll in accordance with the proposal and schedules attached (the "Work");

AND WHEREAS the City has determined that the Work qualifies for funding support under the approved Capital funding up to **funding amount**, payable over the prescribed project term on receipt of invoice from the Recipient and verification of Work by the City, subject to the Recipient entering into this agreement;

NOW THEREFORE, in consideration of the promises made by each of the parties to the other and reflected in this agreement, the parties mutually agree as follows:

1. The following terms when used in this agreement shall have the meanings ascribed to them below:

   (a) "City" means The City of Winnipeg, a municipal corporation;

   (b) "Contribution" means the financial contribution that the City agrees to make or has made in accordance with the terms and conditions of this agreement in respect of costs incurred and paid by the Recipient to carry out the Work;

   (c) "Co-ordinator" means the co-ordinator of the project who, as of the date of this

agreement is City coordinator name, or the successor to his duties or responsibilities;

(d) "Director" means the Director of the relevant Department for the City who, as of the date of this agreement is Director name, or the successor to his duties or responsibilities;

(e) "Recipient" means Group Name;

(g) "Work" means the design, purchase, manufacture and related works to project description on-site.

2. The following appendices attached hereto form part of this agreement:

Schedule "A" - Project Name
Schedule "B" -Project Working Group

In the event of any conflict between the Appendices and this agreement, this agreement shall govern.

Obligations of the City

3. The City shall pay to the Recipient as a Contribution towards the Work and towards management and administrative costs, a sum not to exceed **Funding amount**, which shall be payable in such amounts and at such times as authorized by the Co-ordinator once he has reviewed and approved such documents and invoices as he deems appropriate and necessary.

4. Notwithstanding any other provision of this agreement, the Recipient shall not be entitled to receive any payments under this agreement after **funding deadline** (or such later date as the Director may allow in writing) even if the total amount of the Contribution then paid by the City under this agreement is less than funding amount, and no funds shall be payable or expended by the City in respect of the Work after that date.

5. The Co-ordinator shall monitor the progress and status of the Work to ensure the completed Work meets the objectives of the City, and ensure that the funding is being applied as required by the terms and conditions of this agreement.

6. The City's Public Works Department shall assume maintenance of the Work when completed in accordance with this Agreement. Confirmation of this shall be in the signed Substantial Performance and Total Performance documents.

Obligations of the Recipient

7. The Recipient covenants and agrees as follows:

a) Project Development:

(i) undertake and complete the Work in accordance with the terms and conditions set out in this Agreement and in accordance with plans and specifications approved by the City on , 2007;

(ii) to obtain all permits, approvals, licences and certificates required;

(iii) to not permit, agree or allow any modification or alteration to the approved plans and specifications without the written consent of the Co-ordinator;

(iv) to not award any contract to any contractor(s) not approved by the City;

(v) to provide to the City all work schedules, project cost budgets progress reports and notices required by the City as and when such documents are required and provide written notice of substantial Completion to the City when Substantial completion occurs.

b) Financial:

(i) that all accounting records, financial documents and other records relating to the Work or this Agreement shall be available, at all reasonable times until December 31, 2009 for inspection and audit by the City or its representatives or auditors and shall be produced by the Recipient on demand and shall provide copies of and extracts from accounts, financial documents and other records as are requested, and shall promptly provide such other information as may reasonably be requested from time to time by them;

(ii) to preserve all accounting records, financial documents and other records relating to the Work or this Agreement and to make same available for inspection and audit as required in paragraph 7 hereof;

(iii) to be responsible for all costs incurred with respect to the Work;

(iv) shall not issue payment to the contractor without authorization from the City, by way of inspection and;

(v) to retain a 7.5% Builders Lien holdback, said hold back to be released 41 days after Substantial Performance so long as no claim(s) for lien have been registered;

c) Project Construction Management

(i) to provide the Director or Coordinator access to all information relative to the Work. Copies of any survey results, reports, documents, plans, maps and other materials prepared by or for the Recipient in connection with the Work or pursuant to this Agreement shall be provided to the Director or Coordinator upon request;

(ii) to ensure the Contract Administrator shall monitor the progress and status of the Work and advise the Coordinator of progress and/or issues to ensure the completed Work meets the objectives of the City of Winnipeg Capital program, and that the funding is being applied as required by the terms and conditions of this Agreement;

(iii) to complete the Work to the reasonable satisfaction of and subject to the acceptance of the Coordinator;

(iv) to complete the Work by funding deadline.

d) Insurance

(i) to bear total responsibility for all activities undertaken by any persons hired, employed or contracted by it in fulfilling its obligations under this Agreement and to indemnify and hold the City harmless from any and all claims, demands, actions and causes of action that may be made or had against the City arising out of the activities undertaken by such persons;

(ii) to ensure that the Work is completed in accordance with this Agreement and all applicable statutes, regulations, by-laws and codes and that all necessary approvals and permits are obtained

(iii) The Recipient acknowledges that the City is, for the purposes of The Workplace Safety and Health Act ("WSHA"), the "owner" of the land. The Recipient agrees that it will follow and abide by any directions and instructions given to it by the City in this regard, and will instruct its officers, employees, contractors and agents to follow and abide by such directions and instructions;

(iv) Notwithstanding the City's role as owner of the site/facility name, the Recipient acknowledges and agrees that it has its own obligations and responsibilities pursuant to the WSHA as they relate to the playground redevelopment works. The Recipient agrees that it will be fully responsible for performing, discharging or carrying out these obligations and responsibilities, as the case may be;

(v) Without limiting the generality of subsection (iv) and notwithstanding the City's

role as owner, the City and the Recipient acknowledge that the Recipient as occupier of the lands in, on or about which its facilities are located, is the "owner" of the "construction project site", as these terms are defined in the WSHA, with respect to the location of its facilities to be removed or relocated. The Recipient acknowledges and agrees that, as owner of a construction project site, it will either assume the role of "prime contractor", or it will enter into a contract with an independent contractor to serve as prime contractor for the Work;

(vi) If a determination is made that the Recipient is not an owner of a construction project site, then for the purposes of clause 7(2)(a) of the WSHA, this Agreement shall be deemed to be a contract between the City and the Recipient for the City to serve as the prime contractor;

e) The Recipient shall provide and maintain the following insurance coverage:

(vii) Commercial General Liability insurance, in the amount of at least two million dollars ($2,000,000.00) inclusive, with The City of Winnipeg added as an additional insured, with a cross-liability clause, such liability policy to also contain contractual liability, unlicensed motor vehicle liability, non-owned automobile liability, broad form property damage cover and products and completed operations, to remain in place at all times during the performance of the Work and throughout the warranty period;

(viii) Automobile Liability insurance for owned automobiles used for or in connection with the Work in the amount of at least two million dollars ($2,000,000.00) to be retained at all times during the performance of the Work and until the date of Total Performance;

(ix) An all risks Installation Floater carrying adequate limits to cover all machinery, equipment, supplies and/or materials intended to enter into and form part of any installation;

(x) Deductibles shall be borne by the Recipient.

1. The Recipient shall provide the City Solicitor with a Certificate of Insurance of each policy, in a form satisfactory to the City Solicitor, at least two (2) Business Days prior to the commencement of any Work on the Site;

The Recipient shall not cancel, materially alter, or cause each policy to lapse without providing at least thirty (30) Calendar Days prior written notice to the Coordinator.

8. The Recipient represents and warrants that:

(a) this agreement is entered into in good faith on part of the said Recipient, that no member of City council, officer or director of the City, has any pecuniary interest, direct or indirect, in this agreement or any other agreement or part of an agreement, contract or commission made pursuant to this agreement or to any benefit to arise therefrom;

(b) it possesses, and shall continue to possess, all rights, interest, powers and expertise necessary to properly carry out, manage and complete the Work and to perform the obligations under this agreement;

(c) the execution and performance of this agreement have been properly authorized and the individual or individuals executing this agreement on behalf of the Recipient have authority to do so; and

(d) the description of the Work as outlined in this agreement and the Schedule accurately reflects what the Recipient intends to do and the purposes for which the Contribution will be used.

9. The City may make public announcements and hold official ceremonies and special events respecting the Work where such announcements, ceremonies or events are indicated and appropriate, and shall arrange such announcements, ceremonies or events jointly with the Recipient. The Recipient shall contact the Co-ordinator if it wishes to initiate any such announcements, ceremonies or events.

10. The Recipient shall clearly and prominently acknowledge the Contribution of the City to the Work in all public information material related to the Work and in all signage respecting the Work, using City logos or other identifiers provided by the City for this purpose.

11. The City's responsibility with respect to the Work is limited to the provision of financial assistance to the Recipient in accordance with the terms and conditions set out herein.

12. The City shall not be liable for any injury to or loss or damage suffered by the Recipient, or any officers, directors, employees, agents or contractors of the Recipient, or any third party whether claiming through or under the Recipient, including (without limitation) death or economic loss, caused by or in any way related to the performance of this agreement or the carrying out of the Work.

13. The Recipient shall use due care in carrying out the Work and in the performance of its obligations under this agreement to ensure that no person is injured, no property is damaged or lost and no rights are infringed.

14. The Recipient shall be solely responsible for and shall save harmless and indemnify the City and its councillors, officers, employees and agents from and against all claims, losses, damages, costs, liabilities, demands, actions and other proceedings of any kind with respect to any injury to persons (including, without limitation, death), damage or loss to property, economic loss or infringement of rights caused by, or arising directly or indirectly from:

(a) the Work or performance or carrying out of the Work;

(b) the performance or breach of any term or condition of this agreement or of any contract with a third party by the Recipient or its officers, directors, employees, agents or contractors; and

(c) any omission or wrongful or negligent act of the Recipient or of its officers, directors,

employees, agents or contractors.

15. The Recipient is in breach of and in default under this agreement if at any time:

(a) the Director is reasonably of the opinion that:

(i) the Recipient is not carrying out the Work in a manner acceptable to the City or in accordance with the terms and conditions of this agreement; or

(ii) the Recipient has failed to comply with, abide by or observe any of its covenants, agreements, obligations or undertakings under this agreement

and the Recipient, on receiving notice in writing from the Director of the breach, default or failure, has failed to remedy the breach, default or failure to the satisfaction of the Director within five (5) days of receiving the notice, or in the event the breach, default or failure is such that it cannot be remedied within five (5) days of receiving notice, has failed to present a plan acceptable to the Director to remedy the breach, default or failure within a reasonable period of time; or

(b) any representation or warranty made by the Recipient is false or misleading in any material respect; or

(c) the Recipient becomes, or is about to become, bankrupt or insolvent, goes into receivership or takes the benefit of any statute relating to bankrupt or insolvent debtors; or

(d) an order is made or resolution passed for the dissolution or winding-up of the Recipient; or

(e) the Recipient ceases to operate; or

(f) any creditor of the Recipient claims a lien on, attaches or garnishes any amount of the Contribution.

16. If the Recipient is in breach of or in default under this agreement, the Director may do or require one or more of the following, in addition to the City availing itself of whatever other remedies it may have at law:

(a) suspend or withhold any payments of the Contribution due, or any part thereof, until the Recipient has remedied the breach, default or failure under paragraph 15 to the satisfaction of the Director;

(b) reduce the amount of the City's Contribution which it has committed to pay under paragraph 4;

(c) immediately terminate this agreement and any financial obligation of the City hereunder by giving notice in writing, effective upon receipt or deemed receipt as set out in paragraph 19;

(d) by notice in writing, demand that the Recipient repay to the City part or all of the

Contribution provided under this agreement which amount shall be a debt due and owing by the Recipient to the City and payable on demand.

17. Upon termination of this agreement being provided, the Recipient shall:

(a) cease those activities being funded hereunder which cannot be carried out independently of such funding; and

(b) provide to the Director or Co-ordinator all reports, statements and documents required or requested by any of them upon termination.

18. Upon notice of termination of this agreement, the City shall be under no obligation to the Recipient, including no obligation to make any payments to the Recipient. Upon receipt of a final certified financial statement, the City may, in its sole discretion, pay to the Recipient such amounts as the Recipient may be entitled to receive under this agreement with respect to Work performed up to the date of the notice. The City may set off against these payments any amounts owing to the City by the Recipient.

19. All notices, consents, approvals, statements, authorizations, documents or other communications required or permitted to be given under this agreement shall be in writing, and shall be delivered personally, sent by fax or similar transmitted message, or mailed by registered mail, postage prepaid, to the said parties at the respective addresses or fax numbers set forth hereunder, namely:

To the City at:

City of Winnipeg
Department
Division
Branch
Address
Winnipeg Manitoba

Attention: , Co-ordinator
Fax - (204) 986-

To the Recipient at:

Group name
Address
Winnipeg, Manitoba

Attention: Group contact name,
Fax -

or at such other address or fax number as the party to whom such notice, consent, approval, statement, authorization, document or other communication is to be given, may designate by notice in writing so given to the other party hereto as provided herein.

20. Any notice, consent, approval, statement, authorization, document or other communication given as provided herein shall:

    (a) in the case of personal delivery, be deemed to have been received on the day of delivery, if a business day, or if not a business day, on the business day next following the day of delivery;

    (b) in the case of fax or similar form of transmitted message, be deemed to have been received on the next business day (except Saturdays or Sundays) following transmission; and

    (c) in the case of delivery by registered mail, be deemed to have been received on the fourth business day (except Saturdays and Sundays) following the date of mailing.

21. Any notice, consent, approval, statement, authorization, document or other communication required or permitted to be given by the City in this agreement may be given by the Director unless otherwise expressly provided for herein.

22. This agreement shall be construed, performed and enforced according to the laws of Manitoba as applicable therein and is subject to the exclusive jurisdiction of the courts of Manitoba.

23. This agreement contains the entire agreement between the parties and supersedes, cancels and revokes any and all other agreements between the parties relating to the subject matter of this agreement. There are no representations or warranties, either oral or written, except those contained in this agreement.

24. Neither this agreement nor any of the rights granted by it may be assigned or transferred by the Recipient without the prior written consent of the City. This restriction on assignments or transfers shall apply to assignments or transfers by operation of law, as well as by contract, merger, or consolidation. Any attempted assignment or transfer in derogation of this prohibition is void. No assignment or transfer of this agreement shall relieve the Recipient of any obligation under this agreement except to the extent they are properly performed by the Recipient's permitted assigns or transferees.

25. This agreement may be modified only by a written amendment signed by both parties hereto and may not be altered or supplemented by course of dealing or in any other manner.

26. This agreement shall be binding upon the parties hereto, and shall enure to the benefit of the successors and assigns of the City and the permitted successors and assigns of the Recipient.

27. If any provision of this agreement is for any reason invalid, that provision shall be considered separate and severable from this agreement, and the other provisions of this agreement shall remain in force and continue to be binding on the parties as though the invalid provision had never been included in this agreement.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed as of the day and year first above written.

THE CITY OF WINNIPEG

_____
Mayor

_____
City Clerk

Signed, Sealed and Delivered in the presence of:

Group Name

_____
Witness (if no corporate seal)

Per: _____
(Signature of Authorized Officer)

_____
(Print name and Title)

_____
Witness (if no corporate seal)

Per: _____
(Signature of Authorized Officer)

_____
(Print name and Title)

Approved:

_____
Director of Planning, Property & Development Services

Certified as to Details:

_____
City Project Co-ordinator

Certified as to Form:

_____
Manager of Legal Services

07-07-03

AGREEMENT FOR THE FUNDING OF ONGOING MAINTENANCE AND OPERATING COSTS FOR STREETSCAPE CAPITAL IMPROVEMENTS

In accordance with City Policy, Public Works, & Planning Property and Development, in partnership with Building Communities, are seeking to secure from the affected City Departments and from the St. Boniface Community, confirmation of ownership and responsibility for the ongoing operating and maintenance costs associated with the streetscaping elements proposed for the Provencher Boulevard Streetscaping – 2004 construction project.

The following list itemizes those elements contained within the Provencher Boulevard Streetscaping – 2004 construction project. For each element, there is identified a center of ownership and also a center for the operating and maintenance costs. It should be noted that the operating and maintenance costs may (if determined by the center) include the costs of element replacement. It should further be noted that all operating and maintenance shall be to the satisfaction of the Director of the Department which has assumed the ownership of the streetscaping element in question. In this instance, the St. Boniface Community has the right to contract out maintenance to an independent company of their choice, provided that company is acceptable to the Department concerned, for all of the elements for which they hold maintenance responsibility.
By signing below, the City Departments, Manitoba Hydro, Old St. Boniface/ French Quarter BIZ and Enterprises Riel are agreeing to, and accepting these responsibilities and thereby allowing the project to go to award.

City of Winnipeg – Public Works (Streets Maintenance)

Name / Title _____

Date _____ Signature _____

City of Winnipeg – Electrical – Transportation Planning

Name / Title _____

Date _____ Signature _____

Manitoba Hydro

Name / Title _____

Date _____ Signature _____

City of Winnipeg – Public Works (Parks)

Name / Title _____

Date _____ Signature _____

City of Winnipeg – Public Works (Forestry)

Name / Title _____

Date _____ Signature _____

Old St. Boniface / French Quarter BIZ

Name / Title _____

Date _____ Signature _____

Enterprises Riel

Name / Title_____

Date _____ Signature _____

PROVENCHER BOULEVARD STREETSCAPING-Ownership/Responsibility

Item No.	Description	Units	Approx Qty	Ownership	Maintenance and Operating Responsibility
	REMOVALS AND EARTHWORKS				
1	Barrier curb removal	L.M.	111	streets	NA
2	Ramp Curb removal	L.M.	24	streets	NA
3	Concrete Pavement Removal	S.M.	30	streets	NA
4	Main Entry area removals & Salvage	L.S.	1	streets	NA
5	Median area removals & salvage	L.S.	1	parks	NA
6	Boulevard removals & salvage	L.S.	1	streets	NA
7	Supplying and placing base course material	tonne	55	streets	NA
	ROADWORKS/SIDEWALK				
8	Concrete curb installation				
	i) barrier (180mm ht.)	L.M.	106	streets	streets
	ii) ramp curb (15mm ht.)	L.M.	24	streets	streets
9	Supply and installation of interlocking paving stone				
	i) new concrete paver (200x100)	S.M.	115	streets	streets
	ii) new concrete paver (200x200)	S.M.	185	streets	streets
	iii) new concrete paver (450x450 c/w sod joints)	S.M.	66	parks	parks
10	Reinstall existing/salvaged paving stones	S.M.	335	streets	streets
11	Lean Concrete base	S.M.	20	streets	NA
12	100mm Concrete Sidewalk	S.M.	10	streets	streets
13	Construction of Asphaltic Concrete Pavement Tie-Ins and Approaches Type 1A	tonne	15	streets	streets
	ASSOCIATED DRAINAGE AND UNDERGROUND WORKS				
14	Catch basin i) SD-025	EA	1	streets	streets
15	Connecting to existing sewer	EA	1	streets	streets
16	300 mm DR-35 Sewer Service	L.M.	20	streets	streets
	MISC ITEMS				
17	Decorative Lamp poles, bases, banner arms	EA	30	Mb. Hydro	Mb Hydro
18	SIGNALS, TRAFFIC SERIVCES, Remove and relocate signalization and light pole Provencher and Tache	quote	2	Traffic Signals	Traffic Signals
19	Banners Supply and Install	EA	70	Mb Hydro	Entreprises/BIZ
20	Street Signs Supply and Install	EA	24	Traffic Services (	Traffic Services

Item No.	Description	Units	Approx Qty	Ownership	Maintenance and Operating Responsibility
	SITE FURNISHINGS				
21	Bicycle rack/supply and install	EA	7	streets	BIZ
22	Bicycle rack/supply	EA	1	streets	BIZ
23	Benches: supply and install Type A	EA	4	parks	parks
24	Benches: supply and install Type B	EA	15	parks	parks
25	Waste receptacle/supply and install/	EA	8	water/waste	water/waste
26	Waste receptacle/supply	EA	1	water/waste	water/waste
27	Existing metal fencing refinish on site	L.M.	72	private	private/BIZ
28	Existing Metal Fence repair off site & install on existing footings & plates	L.M.	22.5	private	private/BIZ
29	Existing Metal Fence repair off site & install on new footings	L.M.	22	private	private/BIZ
30	New metal fence supply & install on new footings	L.M.	37	private	private/BIZ
31	Entry gate feature supply/install/ complete with all structual	EA	4	streets	BIZ/Entreprises
32	Electrical/hookup/light fixtures complete	L.S.	1	Transportation Planning	Transportation Planning
	PLANTING PREPARATION				
33	Dry Laid Limestone Planter	L.M.	36	parks	parks
34	Shrub bed preparation and mulch	S.M.	50	parks	parks
35	Annual bed preparation	S.M.	120	parks	BIZ
36	Renovate Existing Tree Well	EA	4	Forestry	Forestry
37	Tree Trench excavation, granular and backfill to finished grade	S.M.	58	Forestry	NA
38	New Tree Well Curb	L.M.	86	streets	streets
39	Existing Tree Well Granular Aggregate	EA	31	parks	parks
	PLANT MATERIAL				Contractor-2yrs then:
40	American Elm	EA	15	Forestry	Forestry
41	Dwarf Lilac	EA	28	parks	parks
42	Hughes Juniper	EA	15	parks	parks
43	Virginia Creeper	EA	20	parks	parks
44	Perennial Mix	EA	60	parks	parks
45	Sod	S.M.	300	parks	parks
46	Landscape Maintenance 2 year/ cost per year	EA	2	parks	parks