Minute No. 465
Report - Executive Policy Committee - June 18, 2003

Item No. 5 **Proposed Interim Solution to the Assiniboine Park Pavilion and Assiniboine Park Bandshell Realty Tax and Financial and Operational Issues**
File FL-2

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That the Plan of Action be approved for implementation as recommended.

2. That the Manager of Revenue and Taxation be requested to pay the amount of realty tax arrears owing against the Pavilion Gallery Museum Inc. (Gallery portion) and the Assiniboine Park Bandshell Inc. as at December 31, 2002, from the Corporate Account Municipal Taxes – City Properties 01-558301-000302.

3. That the Manager of Revenue and Taxation be requested to pay the annual realty taxes owing on the Pavilion Gallery Museum Inc. from the Corporate Account Municipal Taxes – City Properties 01-558301-000302 (Gallery portion) and the Assiniboine Park Bandshell Inc. for the years 2003 and 2004.

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

Report - Executive Policy Committee - June 18, 2003

DECISION MAKING HISTORY:

Moved by His Worship Mayor Murray,
That the recommendation of the Executive Policy Committee be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 18, 2003, the Executive Policy Committee concurred in the administrative recommendation and submitted the matter to Council.

Re: Proposed Interim Solution to the Assiniboine Park Pavilion and Assiniboine Park Bandshell Realty Tax and Financial and Operational Issues
Assiniboia Community
Charleswood Ward

For submission to: Executive Policy Committee

Original report signed by: Chief Financial Officer

Report date: June 5, 2003

Recommendation(s):

1. That the Plan of Action as recommended herein be approved for implementation.
2. That the Manager of Revenue and Taxation be requested to pay the amount of realty tax arrears owing against the Pavilion Gallery Museum Inc. (Gallery portion) and the Assiniboine Park Bandshell Inc. as at December 31, 2002 from the Corporate Account Municipal Taxes – City Properties 01-558301-000302.
3. That the Manager of Revenue and Taxation be requested to pay the annual realty taxes owing on the Pavilion Gallery Museum Inc. from the Corporate Account Municipal Taxes – City Properties 01-558301-000302 (Gallery portion) and the Assiniboine Park Bandshell Inc. for the years 2003 and 2004.

REPORT SUMMARY

Key Issues:

- The Pavilion Gallery Museum Inc. and the Assiniboine Park Bandshell Inc. are in realty tax arrears and have requested the City's assistance to remedy this default.

- Coincident with the matter of realty tax arrears, the Pavilion Gallery Museum Inc. and the Assiniboine Park Bandshell Inc. have requested the City to re-negotiate the terms and conditions of the existing management agreement(s) to increase the City's financial participation in the operation of the Pavilion Gallery Museum and Assiniboine Park Bandshell. Prior to responding to the request, the City has requested audited financial statements and a business plan for both facilities.

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 of Winnipeg**
	Involves a multi-year contract

Comment(s):

- The Administration is attempting to resolve the realty tax, financial and operational issues related to the Management Agreements assuming that a new Special Operating Agency will be created for the Assiniboine Enterprise and which will become responsible for the subject facilities.

Policy implications:

X	**No** (*There are no policy implications if the report is asking for a one-time decision.)*
	Yes *(There are policy implications if the recommendation(s) is/are asking for a decision that will be used to guide decisions over time.)*

Comment(s):

- This report identifies several alternatives and provides for a recommendation regarding an optimum interim realty tax solution.

Environmental implications:

X	**No**
	Yes

Comment(s):

- This report deals with the administration of the financial aspects of two existing Management Agreements. As such, there are no environmental implications.

Human resources implications:

X	**No**
	Yes

Comment(s):

Financial implications:

X	**Within approved current and/or capital budget**
	Current and/or capital budget adjustment required

Comment(s):

-

REASON FOR THE REPORT:

The Administration has reviewed the existing realty tax and financial operating problems affecting Pavilion Gallery Museum Inc. and Assiniboine Park Bandshell Inc. and has developed a proposed interim remedy that requires Council consideration.

HISTORY:
In 1995, the former Parks and Recreation Department sought to improve the attractiveness of Assiniboine Park by expanding the range of public attractions and expanding the spectrum of dining and food opportunities within the park. In addition, the former Department wished to complete a refurbishment of the existing Pavilion building.

Given the scarcity of available capital funding, the former Department sought to achieve the above improvements by using non-city capital sources. The Pavilion Gallery Museum Inc. and the Assiniboine Park Bandshell Inc. provided access to approximately $4.0 million in capital funding of which approximately $1.5 million was in the form of public grants.

In 1997 and 1998, four agreements were created to facilitate the following: (1) to renovate the Pavilion Building (2) to construct a restaurant (3) to operate a restaurant and (4) to build the Bandshell. Two agreements were entered into between the City and Pavilion Gallery Museum Inc.; one agreement between the City and Assiniboine Park Bandshell Inc.; and, a separate agreement between the Pavilion Gallery Museum Inc. and the restaurant operator. The details of the three City Agreements are listed below.

Management Agreement – Assiniboine Park Pavilion Building
By Agreement dated September 3, 1997, the City and Pavilion Gallery Museum Inc. entered into a Management Agreement for the refurbishment and modernization of the Assiniboine Pavilion Building.

Details of the Management Agreement:

Owner:	City of Winnipeg
Manager:	Pavilion Gallery Museum Inc.
Location:	55 Pavilion Crescent
Misc. Plan:	(As shown on the attached Schedule “A”)
Zoning:	PR 2
Term:	50 years
Commencement Date:	September 3, 1997
Termination:	On default
Maintenance:	General & Operating - Manager – Clause 6.01 with funding from the Fund as specified in Clause 6.03. Capital – City – Clause 6.02
Capital Investment:	Private - $2.0 million Grants - $1.5 million
Revenue Sharing:	Revenue sharing – Occurs when the facility generates over $77,000.00 in annual net revenue to the Manager from the restaurant at which time the City is to receive a 1/3 share up to a maximum of $70,000.00
Operating Costs:	Manager
Endowment Fund:	Manager – Clause 10.01 – to be used to fund unforeseen contingencies or lower than expected revenues
Realty taxes:	Gallery - Exempt from School taxes, Manager liable for municipal and business taxes.
Annual Operating Grant:	$70,000.00 per year for the first five years
Proposed Use:	Museum Gallery

Lease Agreement – Restaurant within the Assiniboine Pavilion Building:

By Agreement dated September 15, 1998, the City and Pavilion Gallery Museum Inc. entered into a Lease Agreement for the operation of a restaurant within the Assiniboine Pavilion Building.

Details of the Lease Agreement

Owner:	City of Winnipeg
Tenant:	Pavilion Gallery Museum Inc.
Location:	55 Pavilion Crescent
Misc. Plan:	(As shown on Schedule "B")
Zoning:	PR 2
Term:	50 years
Commencement:	September 15, 1998
Termination:	1 years notice
Maintenance:	General & Operating – Tenant – Clause 3.01 Capital – City – Clause 3.02
Rental:	$1.00 per year *
Realty taxes:	Lessee responsible to pay all realty and business taxes
Proposed Use:	Restaurant

*The Pavilion Gallery Museum Inc. enters into a separate commercial lease with the restaurant operator based on a fair market value rental.

Management Agreement – Assiniboine Park Bandshell

By Agreement dated March 25, 1998, the City and Assiniboine Park Bandshell Inc. entered into a Management Agreement for the development and operation of a bandshell facility in Assiniboine Park.

Details of Management Agreement:

Owner:	City of Winnipeg
Manager:	Assiniboine Park Bandshell Inc.
Location:	45 Pavilion Crescent
Misc. Plan:	(As shown on the attached Schedule "C")
Zoning:	PR 2
Term:	50 years
Commencement Date:	March 25, 1998
Termination:	On default
Capital Investment:	Private - $400,000.00
Maintenance:	General & Operating –Manager – Clause 6.01 Capital – Manager – Clause 6.01
Realty taxes:	Bandshell exempt from School taxes, Manager liable for municipal taxes
Proposed Use:	Outdoor Stage

By letter dated May 30, 2001, representatives of the Pavilion Gallery Museum Inc. inquired of the City for assistance to resolve a realty tax arrears problem that had accrued for the period between 1999 and 2001 in the approximate amount of $200,000.00.

The Pavilion Gallery Museum Inc. and the Assiniboine Park Bandshell Inc. initiated an appeal in 1998 for the 1999 Assessment Roll to the Board of Revision respecting the assessed value of the structures and the liability to pay realty taxes on the Pavilion Gallery (a portion of the Assiniboine Pavilion - Roll No. 12074500400) and on the Bandshell (Roll No. 12074500500).

At a meeting held on April 17, 2002, Partners in the Park (i.e. the umbrella organization to which the Museum and Bandshell organization's report) advised the City that it did not have enough revenue to cover its operating expenses for the Assiniboine Pavilion and the Assiniboine Bandshell and that the Partners in the Park and Leo Mol entities were not covering their costs. Partners in the Park produced a preliminary unaudited Projected Income Statement for the year ending December 31, 2002.

In its letter dated May 9, 2002, Partners in the Park indicate, amongst other things, that they required the City's financial assistance to address the financial problems facing the operation of both facilities.

During the period between July and October 2002, the Administration met to discuss the subject issue and held informal meetings with representatives of the Pavilion Gallery Museum Inc. and the Assiniboine Park Bandshell Inc.

By letter dated December 4, 2002, the City made a proposal to the Partners in the Park regarding realty taxes and other operating issues, a copy of which is attached as Schedule "D".

By letter dated December 9, 2002, the Partners in the Park, in writing, confirmed acceptance of the proposal dated December 4, 2002, a copy of which is attached as Schedule "E".

DISCUSSION:

The following issues require discussion and consideration.

Part A) REALTY TAXATION ISSUE:

i) Realty Tax Arrears:

A summary of the realty tax arrears are as follows:

Pavilion Gallery Museum Inc.(The Assiniboine Pavilion)

Municipal	$ 44,550.37 (2002)	
School	Exempt	
Arrears including interest as at June30/03		$174,613.58
Covering years 1999 through 2002		

Assiniboine Bandshell Inc.(The Assiniboine Bandshell)

Municipal $9,885.29 (2002)
School Exempt
Arrears including interest as at June 30/03 $43,355.66
Covering years 1999 through 2002

Part B) OPERATING ISSUES:

Assiniboine Pavilion:

a) Annual Operating Grant (*first five years 1998-2002)*

In the case of the Assiniboine Pavilion, the City agreed to make an annual operating grant of $70,000 for the first five years of the Management Agreement to assist Partners in the Park with the new venture and to review the need for a continued grant at the end of the five-year period (ending in 2002). The annual operating grants for the years 1998 through 2000 have been paid to the Pavilion Gallery Museum Inc.; however, the remaining grants for 2001 and 2002 have not yet been paid. This represents an additional $140,000.00 in revenue owing to PGMI.

b) Maintenance

The Pavilion Gallery Museum Inc. Agreement also required that an annual 3% contribution (3% Fund, clause 6.03 PGMI Agreement) from gross revenues from all sources be deposited into a maintenance reserve. Currently, PGMI is calculating this amount and will make an adjusting entry between the Endowment Fund and the 3% Fund for the years between 1998 and 2002. Thus far, all maintenance costs have been expensed on an annual basis.

PGMI has advised that the maintenance expense in 2002 was higher than anticipated and that it wishes to renegotiate the cost sharing of this responsibility with the City.

c) Income Sharing

The Pavilion Gallery Museum Inc. Agreement provided for income sharing of the restaurant revenue wherein the City would be entitled to a 1/3 share in income from restaurant revenue above $77,000.00 per annum (clause 13.01 of the PGMI Agreement). As of this date, the amount of income sharing revenue owing to the City is approximately $86,470.00.

PGMI has advised that it needs to defer payment of this amount to the City pending a resolution of all outstanding issues and that it wants to renegotiate this term as a result of higher than anticipated operating costs for the Pavilion Gallery Museum facility.

d) Security

The Pavilion Gallery Museum Inc. Agreement requires the Manager to provide security for the facility. In 2002, PGMI expended approximately $61,859.00 for security.

This expense is higher than anticipated and PGMI wants to renegotiate this term and to discuss alternatives as a result of higher than anticipated operating costs for the Pavilion Gallery Museum facility.

Assiniboine Park Bandshell:

In the matter of the Assiniboine Park Bandshell Inc., the Manager agreed to be fully responsible for all operating costs without a grant and to complete maintenance from a perpetual maintenance fund set up by the Manager pursuant to clause 10.01 of the Bandshell Agreement. The Manager has not asked the City for any assistance with the operations of the facility; however, it does require that the realty tax issue be addressed.

Part C) INTER-RELATIONSHIP BETWEEN REALTY TAX AND FINANCE AND OPERATION ISSUES AND REVIEW OF CITY ALTERNATIVES

Interim Solution for Realty Tax and Operations:

The Administration represented by the Chief Administrative Officer, Chief Financial Officer, City Assessor, Manager of Revenue and Taxation, City Solicitor(s), Manager of Financial Services and representatives from the Planning, Property and Development Department met on multiple occasions to discuss various matters including:

- the need to develop an interim solution to address the current Pavilion and Bandshell issues;
- the need to address the realty tax and financial matters prior to the potential transfer of the Assiniboine Pavilion and Bandshell to a Special Operating Agency;
- a review of realty tax and operating grant alternatives.

As a result, Administration after due consideration, recommends that the City pay all arrears, and, 2003 and 2004 realty taxes as an interim remedy pending the Province's decision regarding the taxation treatment of similar lessees of City owned land.

The arrears and realty taxes would be paid from the Corporate Account Municipal Taxes – City Properties 01-558301-000302. This account was specifically set up to provide a funding source to pay realty taxes on City-owned facilities used for City purposes.

With respect to the need for ongoing finance/operation support, this alternative provides the opportunity for the City to first obtain all required background information and then to evaluate the need for ongoing operating grants.

Although the payment of realty tax in this instance from a departmental account set up to pay realty taxes can be distinguished from the City's established grant policy, it should be understood that this action represents a form of subsidy similar to a grant, albeit on an interim basis.

Part D) ANALYSIS AND FORMULATION OF PROPOSAL

Administration recommends implementing the above to deal with the current realty tax arrears and financial issues at the Gallery and Bandshell for the following reasons:

- It is the most feasible means of addressing the realty tax arrears issue with the least systemic impact;
- Provides for an interim solution during 2003 and 2004;
- It provides for the Manager's payment of a potential reduced realty tax liability pending an amendment to the MMAA; and
- It provides an opportunity for the City to examine the need for ongoing financial assistance and to determine same prior to making an operating grant decision.

Further, the working group obtained additional advice from the Corporate Finance Department regarding the Pavilion Gallery Museum Inc. financial matters. The Department recommended that the City should obtain additional financial information from the Pavilion Gallery Museum Inc. and the Assiniboine Park Bandshell Inc. for the last four year period. As well, that the City not make any further approvals related to operating grants to the Partners in the Park until such time as a business plan is developed to guide the management, development and maintenance of each facility and be a precursor to approving any future operating grants. In addition, that donations appear to have been a significant revenue stream in the past to support the Pavilion and as such, the development of a formal donation and support campaign should be addressed in the business plan.

Implementation of this recommendation would bring both Management Agreements into "good standing" and would therefore allow the PGMI to request payment of the City's operating grants for 2001 and 2002. Given that the City does wish to release such monies pending a resolution of the realty tax and operating issues, any proposal should require that PGMI defer its right to such city grants pending a resolution of the matter.

On the above referenced basis, the working group requested the Real Estate Division and Legal Services Division in consultation with the CFO, to develop a proposal and to present same to the Partners in the Park. The Proposal was made to the Partners in the Park under letter dated December 4, 2002 as follows:

Administrative Proposal:

Gallery Portion:

The Pavilion Gallery Museum Inc. will agree to:

a) upon passing of a Council resolution and signing of all necessary documents, PGMI will withdraw that portion of the appeal to the Board of Revision relating to liability on Roll No. 12074500400 for the tax roll amendments for 1999 and 2000 and for the general assessment of 2002, which has now been adjourned into 2003.

b) not demand payment of the operating grants under the September 3, 1997 Management Agreement for the years 2001 and 2002 until such time as the amendments are made to the Management Agreement dated September 3, 1997 and signed.

The City will agree to:

a) pay the amount of realty tax arrears (realty tax, interest and penalties) plus GST– municipal portion owing on the gallery portion of the Assiniboine Pavilion to the period ending June 30, 2003; and

a) pay the municipal portion of annual realty taxes plus GST on the gallery portion of the Assiniboine Pavilion in 2003 and 2004; however, if the Province makes legislative changes resulting in significantly lower property taxes in either 2003 or 2004, the Pavilion Gallery Museum Inc. will pay the realty tax levy – municipal portion commencing in the year in which the change applies and every subsequent year thereafter during the term.

b) not demand for payment of its share of restaurant revenues under the September 3, 1997 Management Agreement pending the submission of audited financial statements and the business plan and signing the amendment to the September 3, 1997 Management Agreement.

Restaurant Portion:

The Pavilion Gallery Museum Inc. will agree to:

a) pay the annual realty taxes – school and municipal owing on the restaurant portion of the Assiniboine Pavilion including GST and for the duration of the existing lease term. (*All realty and business taxes owing on the Restaurant have been paid in full).*

Assiniboine Park Bandshell Inc.:

Currently, the Assiniboine Bandshell Inc. is in realty tax arrears in the amount of $42,712.57 for the years 1999 through 2002 (calculated as at April 1, 2003) including interest and penalties.

The Assiniboine Park Bandshell Inc. will agree to:

a) withdraw that portion of the appeal to the Board of Revision relating to liability on Roll No. 12074500500 for the tax roll amendments for 1999 and 2000 and for the general assessment for 2002, which has now been adjourned into 2003.

The City will agree to:

a) pay the amount of realty tax arrears (realty tax, interest and penalties) plus GST owing on the Assiniboine Bandshell to the period ending June 30, 2003; and

b) pay the municipal portion of annual realty taxes plus GST on the gallery portion of the Assiniboine Pavilion in 2003 and 2004; however, if the Province makes legislative changes resulting in significantly lower property taxes in either 2003 or 2004, the Pavilion Gallery Museum Inc. will pay the realty tax levy – municipal portion commencing in the year in which the change applies and every subsequent year thereafter during the term.

In addition, the Partners in the Park agreed to provide financial statements for the Pavilion Gallery Museum Inc. and for the Assiniboine Pavilion Bandshell Inc. for the years 1999 through 2002.

As well, the Partners in the Park also agreed to provide a business plan for both entities for the next five and ten years as a pre-requisite to the consideration of any future operating grants.

Part E) STATUS OF PROPOSAL AND PROPOSED PLAN OF ACTION

By letter dated December 9, 2002, the Partners in the Park confirmed acceptance of the subject proposal from the City, a copy of which is attached as Schedule "E".

Given the acceptance of the proposal, the Planning, Property and Development Department is submitting the proposed plan of action for endorsement as follows:

Proposed Plan of Action:

(1) Approve the Proposal *(City realty tax proposal dated December 4, 2002 and accepted by the Partners in the Park on December 9, 2002)* on the understanding that:

- PGMI defer its entitlement to operating grants under the September 3, 1997 Management Agreement for the years 2001 and 2002 at this time;
- The City will not demand payment of its share of restaurant revenues under the same agreement pending the submission of audited financial statements and business plan and settling matters concerning the ongoing operation of the museum gallery and bandshell to the satisfaction of the City.

(2) Request Partners in the Park to submit audited financial statements for the Pavilion Gallery Museum Inc. and the Assiniboine Park Bandshell Inc. from 1999-2002. *(Partners in the Park have now submitted some but not all financial statements);*

(3) Request Partners in the Park to submit a business plan for the Assiniboine Pavilion and Assiniboine Bandshell if one is available; if none is available, then to submit such plan for a period of 5 years with a further 5 year projection. *(Partners in the Park have advised that the firm of KPMG has been retained to prepare a business plan for the Assiniboine Pavilion and Bandshell);*

(4) Review financial statements and business plan and determine the recommended amount of annual grant (to include a review of other grants made to other organizations) and provide a subsequent report to Council for its consideration.

Financial Impact Statement

Date: December 19, 2002

Project Name:

Assinoine Park Pavillion and Assiniboine Bandshell

Current Expenditures/Revenues	**2002**	**2003**	**2004**	**2005** (Note 1)	**2006** (Note 1)
Direct Costs					
Additional Salaries & Benefits	$ -	$ -	$ -	$ -	$ -
Real Estate Commission					
Surveying Costs					
Demolition Costs					
Consultant Expenses					
Purchased Materials & Services					
Taxes & Related Costs	217,969	54,436	54,436		
Interest					
WLTO					
Other					
Non-Recoverable GST (3%)	6,539	1,633	1,633	-	-
Debt and Finance Charges	-	-	-	-	-
	$ 224,508	$ 56,069	$ 56,069	$ -	$ -
Existing Budgeted Costs	$ 224,508	$ 56,069	$ 56,069	$ -	$ -
Debt and Finance Charges	-	-	-	-	-
	$ -			$ -	$ -
Incremental Revenue/Recovery					
Sales Revenue	$ -	$ -	$ -	$ -	$ -
Leasing Revenue (to incl equiv to tax amt)					
Recoveries	224,508	56,069	56,069		
Interest Expense	-	-	-	-	-
Administrative Expense 1% (maximum $100,000/project)	-	-	-	-	-
	$ 224,508	$ 56,069	$ 56,069	$ -	$ -

Note 1: Existing Budgeted Costs are assumed to be equivalent to those adopted by Council in 2001 to 2003.

Overheads

Interest	3.00%	Subject to change from time to time. Charged on external expenses only. Interest is charged on internal salaries, however, it is included in the Overhead Charges listed above.
Administration	1.00%	Charged on external expenditures only. Administration is charged on internal salaries, however, it is included in the Overhead Charges listed above.

IN PREPARING THIS REPORT, THERE WAS CONSULTATION WITH AND CONCURRENCE BY:

Chief Financial Officer

City Assessor

Community Services

Property Assessment Department

Corporate Finance Department

Planning, Property and Development Department

Legal Services Division

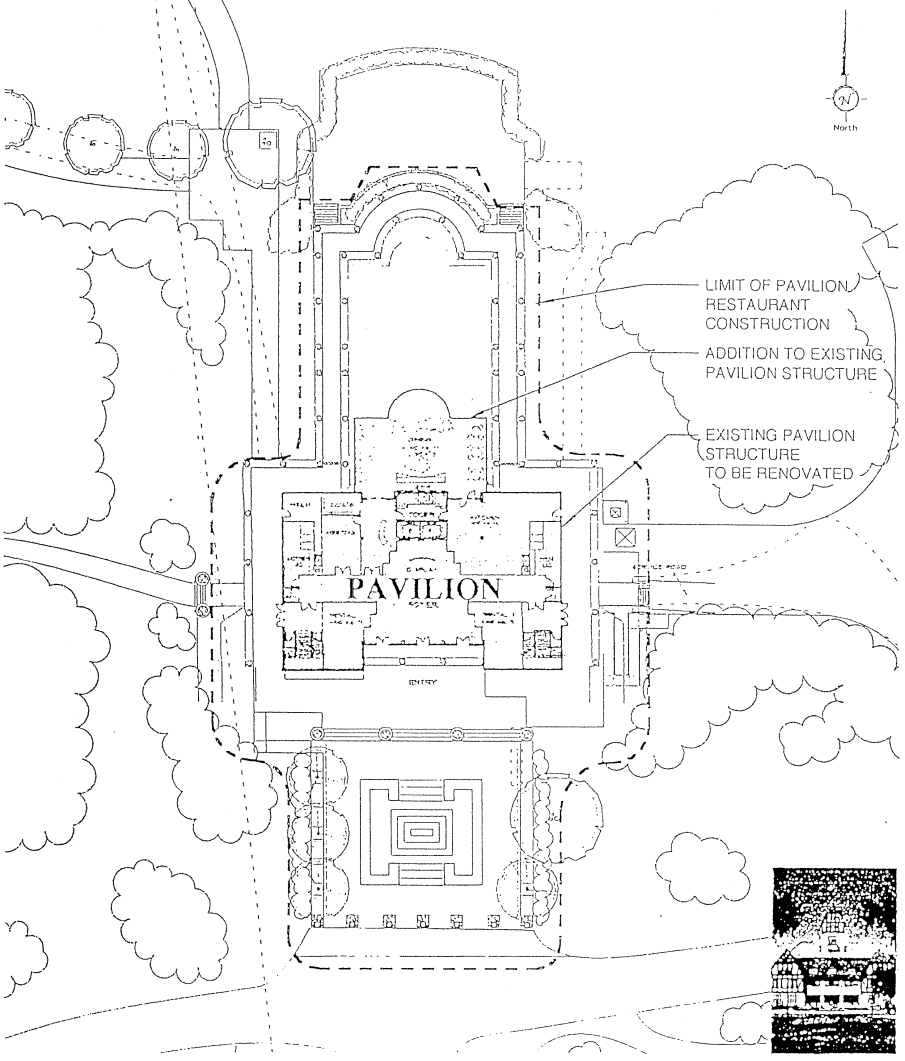
THIS REPORT PREPARED BY:

Property Assessment Department, Corporate Finance Department & the
Planning, Property and Development Department
Division: Real Estate
Prepared by: D.Armstrong
PPD File #: 18(II)

Document name: o:\reports directive\real estate\leasing\(da) Pavillion2.doc

SCHEDULE A

THIS IS EXHIBIT "A" REFERRED TO IN THE LEASE DATED THE DAY OF , 199 BETWEEN THE CITY OF WINNIPEG AND PAVILION GALLERY MUSEUM INC.

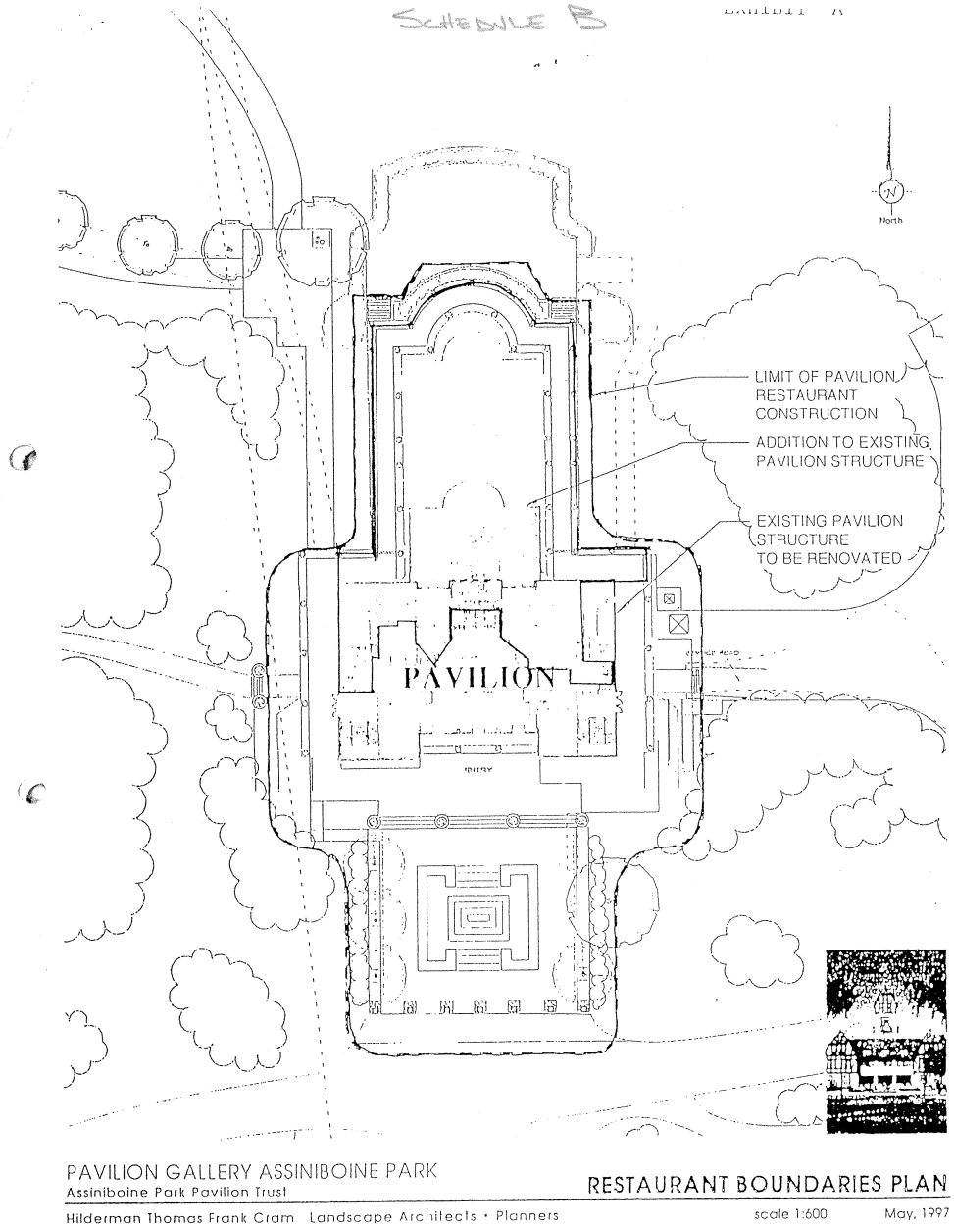


PAVILION GALLERY ASSINIBOINE PARK
Assiniboine Park Pavilion Trust

RESTAURANT BOUNDARIES PLAN

Hilderman Thomas Frank Cram Landscape Architects • Planners

scale 1:600 May, 1997



PAVILION GALLERY ASSINIBOINE PARK
Assiniboine Park Pavilion Trust

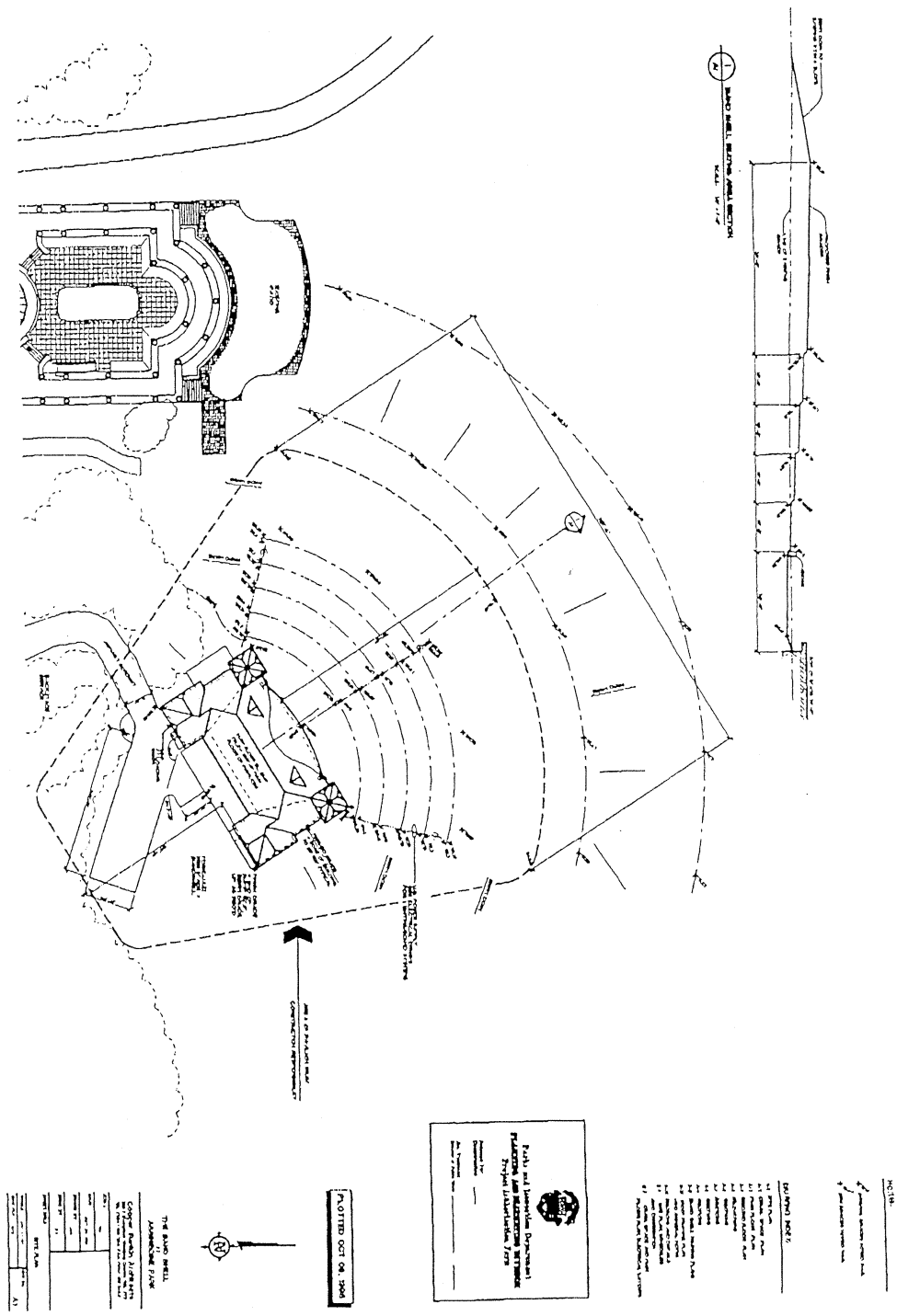
RESTAURANT BOUNDARIES PLAN

Hilderman Thomas Frank Cram Landscape Architects • Planners

scale 1:600 May, 1997

-02 MON 10:04 AM CITYOFWPG LEGAL SERVICES FAX NO. 204 947 9155 P. 18/18

SCHEDULE "C"



Schedule "D"

Winnipeg

Planning, Property & Development Department • Service de l'urbanisme, des biens et de l'aménagement

Real Estate Division • Division des biens immobiliers

In reply please refer to / Référence à rappeler :

D.Armstrong
(204) 986-3811
Fax / Téléc. : (204) 944-8476

December 4, 2000

Mr. H. Richardson
Partners in the Park
55 Pavillion Crescent
Winnipeg, Manitoba
R3P 2N6

Dear: Mr. Richardson

RE: PROPOSAL TO REMEDY OUTSTANDING REALTY TAX DEFAULTS AT THE ASSINIBOINE PAVILLION AND ASSINIBOINE BANDSHELL – REQUEST FOR FINANCIAL STATEMENTS AND BUSINESS PLAN
FILE: 18(II)(PLEASE QUOTE WHEN REPLYING)

This letter is a follow up to your letters dated October 18, 2002 and November 7, 2002 and to meetings held on October 22, 2002 and November 22, 2002 with Ms.D.Hicks, Executive Director and Mr.W.Peever.

1. Outstanding Realty Taxes:

As discussed, the Planning, Property and Development Department indicated that it would provide an updated written proposal to the Manager(s) of the Assiniboine Pavillion and Bandshell to remedy the outstanding realty tax defaults.

The Administration is prepared to recommend the following proposal to remedy the realty tax matters at the Assiniboine Pavillion and Bandshell to Council for its consideration and approval:

i) Pavillion Gallery Museum Inc.:

Currently, Pavillion Gallery Museum Inc. is in realty tax arrears in the amount of $167,622.69 for years 1999 through 2002 (calculated as at December 31, 2002) including interest and penalties.

Gallery Portion:

The Pavillion Gallery Museum Inc. will agree to:

a) upon passing of a Council resolution and signing of all necessary documents, PGMI will withdraw that portion of the appeal to the Board of Revision relating to liability on Roll No. RA 12-074500400 for the tax roll amendments for 1999 and 2000 and for the general assessment of 2002, which has now been adjourned into 2003.

b) not demand payment of the operating grants under the September 3, 1997 Management Agreement for the years 2001 and 2002 until such time as the amendments are made to the Management Agreement dated September 3, 1997 and signed.

The City will agree to:

a) pay the amount of realty tax arrears (realty tax, interest and penalties) plus GST–municipal portion owing on the gallery portion of the Assiniboine Pavillion to the period ending December 31, 2002; and

b) pay the municipal portion of annual realty taxes plus GST on the gallery portion of the Assiniboine Pavillion in 2003 and 2004; however, if certain changes are made to the Manitoba Municipal Assessment Act relating to a lesser apportioned value of approximately 10% in either 2003 or 2004, the Pavillion Gallery Museum Inc. will pay the realty tax levy – municipal portion commencing in the year in which the change applies and every subsequent year thereafter during the term.

c) not demand for payment of its share of restaurant revenues under the September 3, 1997 Management Agreement pending the submission of audited financial statements and the business plan and signing the amendment to the September 3, 1997 Management Agreement.

Restaurant Portion:

The Pavillion Gallery Museum Inc. will agree to:

a) pay the annual realty taxes – school and municipal owing on the restaurant portion of the Assiniboine Pavillion including GST and for the duration of the existing lease term.

ii) Assiniboine Park Bandshell Inc.:

Currently, Assiniboine Bandshell Inc. is in realty tax arrears in the amount of $41,619.87 for the years 1999 through 2002 (calculated as at December 31, 2002) including interest and penalties.

The Assiniboine Park Bandshell Inc. will agree to:

a) withdraw that portion of the appeal to the Board of Revision relating to liability on Roll No. RA-12-074500500 for the tax roll amendments for 1999 and 2000 and for the general assessment for 2002, which has now been adjourned into 2003.

The City will agree to:

a) pay the amount of realty tax arrears (realty tax, interest and penalties) plus GST owing on the Assiniboine Bandshell to the period ending December 31, 2002; and

pay the municipal portion of annual realty taxes plus GST on the Assiniboine Bandshell in 2003 and 2004; however, if certain changes are made to the Manitoba Municipal Assessment Act relating to a lesser apportioned value of approximately 10% in either 2003 or 2004, the Assiniboine Park Bandshell Inc. will pay the realty tax levy – municipal portion commencing in the year in which the change applies and every subsequent year thereafter during the term.

The above proposal is being submitted for your consideration and acceptance and should be considered separate and apart from the additional requests for financial statements and a business plan. Please provide a written response to the subject proposal prior to December 10, 2002. This proposal is subject to Council approval; and, all documentation associated thereto must be in a form satisfactory to the City Solicitor and the Partners in the Park.

2. Annual Financial Statements:

This will acknowledge the receipt of the Financial Statements for the Pavillion Gallery Museum Inc. for the years 1999 through 2001 inclusive. The Department is also requesting the audited financial statements for the Assiniboine Park Bandshell for the same time period. Could you please arrange to have same provided to the Department as soon as possible.

Although not required by existing agreement, the Department would also appreciate the receipt of the audited financial statements for the Partners in the Park and the Leo Mol Sculpture operations.

3. Business Plan:

As discussed at the meeting held on October 22, 2002, the Planning, Property and Development Department is requesting that a business plan be prepared to establish the goals and objectives of the Assiniboine Park Pavillion Gallery and the Assiniboine Park Bandshell entities over the next (5) five and (10) ten years respectively.

As well, be advised that a comprehensive business plan would be a pre-requisite to any consideration being given to future amendments to the existing management agreements and to the consideration of requests for future operating grants.

4. Timeframes:

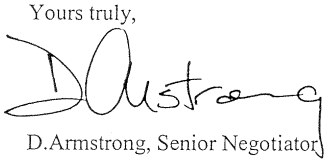
It is understood between the parties that the realty tax matter contained herein will be forwarded to Council as soon as possible following the City's receipt of your written response to this proposal.

With respect to the (1) submission of audited financial statements, (2) preparation of business plan (3) negotiation of potential management agreement amendments and (4) settlement of income owing to the City and operating grants available to the PGMI, it is anticipated that the business plan will be completed by March 31, 2003 and that the review, negotiation of potential amendments to the management agreement and settlement of monies owing and a report to City Council will be completed by May 31, 2003.

The Department would appreciate an early receipt of your written response to the subject proposal.

I trust that the above addresses all of the short term issues relative to the Assiniboine Pavillion and Bandshell and if you should have any further questions or concerns, please call me at 986-3811.

Yours truly,



D.Armstrong, Senior Negotiator

DJA/dja

cc: E.Gilroy, Manager of Executive Policy Committee
B.Gannon, Chief Financial Officer
B.Moore, City Assessor
B.Weselowski, Manager of Revenue and Taxation
G. Steski, Manager of Financial Services
B. Nicol, Manager of Assiniboine Park Enterprise
L.E.Strijack, Legal Counsel
D.Pambrun, Legal Counsel



partners
IN THE PARK

Schedule "E"

December 9, 2002

By Courier



Mr. Don Armstrong, Senior Negotiator
City of Winnipeg
Planning, Property & Development Department
2nd Floor, 65 Garry Street
Winnipeg, Manitoba
R3C 4K4

Dear Don:

We have reviewed your proposal to remedy the outstanding realty tax issues at the Assiniboine Pavilion and Assiniboine Bandshell as set out in your letter of December 4th. We are in agreement with the proposal and therefore accept the terms and conditions as outlined. Thank you for your diligence and cooperation in resolving these matters.

We are pleased that we can move on and continue to provide Winnipeggers and tourists opportunities to enjoy fine art, sculpture and the performing arts at Assiniboine Park, all free of charge.

In case I don't have an opportunity to speak to you, I extend all the best for the Holiday Season and the New Year.

Yours sincerely,

Hartley Richardson

cc Donna Hicks
Wells Peever
HTR:bs

55 Pavilion Crescent
Winnipeg, Manitoba R3P 2N6
Tel 204.888.5466 Fax 204.889.8136